

No. 87-352

Supreme Court, U.S.  
FILED

DEC 1 1987

In the Supreme Court of the United States

OCTOBER TERM, 1987

SUN OIL COMPANY,  
*Petitioner,*

vs.

RICHARD WORTMAN and HAZEL MOORE, Individually  
and as representatives of all producers and royalty owners  
to whom Sun Oil Company has made or should make pay-  
ment of suspended proceeds or royalties pursuant to FPC  
opinions or FERC,  
*Respondents.*

ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE STATE OF KANSAS

JOINT APPENDIX

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**Petition for Certiorari Filed August 28, 1987**  
**Certiorari Granted October 19, 1987**

#### EDITOR'S NOTE

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## RELEVANT DOCKET ENTRIES

Docket Entries from District Court, Barber County, Kansas, District Court No. 79-C-40:

<u>Date</u>	<u>Item</u>
8-23-79	Petition Cost Pd. Chapin Penny, & Goering Rec. # 7421
10-25-79	Answers of Defendant Sun Oil Company (Delaware) to Plaintiffs' Interrogatories
10-25-79	Answer of Defendant Sun Oil Company (Delaware) to Petition
12-04-79	Supplemental Answers of Defendant
11-29-82	Memorandum Brief in Support of Plaintiffs' Motion to Certify as a Class Action
12-23-82	Memorandum of Defendant Sun Exploration & Production Company (formerly Sun Oil Co. [Delaware]) in Opposition to Plaintiffs' Motion to Certify as a Class Action
12-30-82	Response of Plaintiffs to Memorandum of Defendant on Class Certification
1-11-83	Journal Entry on Class Certification & Notice (J. 18, P. 585)
5-23-83	Journal Entry on Motion for Withdrawal (Phillips Petro.) (J. 19, P. 361)
9-06-83	Pre-Trial Order (J. 19, P. 678)
9-09-83	Notice of Scheduling Trial, set for 10-13-83
10-13-83	Plaintiff's Evidence and Trial Brief (Trial)

10-25-83 Copy of Plaintiffs' Suggested Findings of Fact and Conclusions of Law

11-14-83 Def.'s Suggested Findings of Fact & Conclusions of Law w/copy of letter to Renner

12-01-83 Transcript of Proceedings (hearing held 10-13-83)

12-13-83 Memorandum Decision (J. 20, P. 152)

12-29-83 Journal Entry of Judgment (J. 20, P. 221)

1-06-84 Notice of Appeal & Cert. of Serv.

4-18-85 Mandate from Supreme Court of Kansas

4-18-85 Syllabus by the Kansas Supreme Court (Oct. 26, 1984 opinion)

3-17-86 Brief of Sun Oil Company on Remand from the United States Supreme Court and the Kansas Supreme Court & Cert. of Service, filed

3-19-86 Motion to Decertify Class & Cert. of Service

4-10-86 Brief of Plaintiff Class on Remand from the United States Supreme Court and the Kansas Supreme Court

4-25-86 Reply of Sun Oil Company, filed

4-29-86 Supplemental Reply of Sun Oil Company & Cert. of Service, filed

5-09-86 Sun Oil's Suggested Findings of Fact and Conclusions of Law, filed

5-09-86 Plaintiffs Suggested Findings of Fact and Conclusions of Law, filed

7-14-86 Memorandum Decision, filed

7-28-86 Notice of Appeal & Cert. of Service, filed

7-1-87 Syllabus by the Court - from Kansas Supreme Court - filed (March 30, 1987 opinion)

8-11-87 Supersedeas Bond

Docket Entries from the Kansas Supreme Court, No. 84-56494-AS:

10-9-85 Order U.S. Supreme Court

1-7-86 Case remanded to district court with instructions to proceed pursuant to order of U.S. Supreme Court

Docket Entries from the Kansas Supreme Court, No. 86-59804-AS:

10-24-86 Brief of Appellant

11-24-86 Brief of Appellee

12-04-86 Reply Brief of Appellant

3-30-87 Judgment docketed & Opinion filed, Affirmed in part, Reversed in part, Herd, J. Indexed—Counsel & Judge Notified. Mandate issued, June 30, 1987

4-20-87 Motion for Rehearing

4-29-87 Response to Motion for Rehearing

6-08-87 Order - Motion for Rehearing Denied. Opinion is Modified. (See Order)

6-15-87 Motion to Alter Court's Modification of Opinion

6-19-87 Denied. Journal Indexed. Counsel Notified.



(Filed August 23, 1979)

IN THE  
DISTRICT COURT OF BARBER COUNTY, KANSAS

RICHARD WORTMAN and HAZEL )  
MOORE, individually and as representa- )  
tives of all producers and royalty owners )  
to whom Sun Oil Company has made or )  
should make payment of suspended pro- )  
ceeds or royalties pursuant to FPC ) No. 79 C 40  
Opinions or FERC, )  
Plaintiffs, )  
vs. )  
SUN OIL COMPANY, a Delaware Cor- )  
poration, )  
Defendant. )

(Civil Class Action under K.S.A. Chapter 60)

**PETITION**

COME NOW the plaintiffs and allege and show to the court:

1) Plaintiff Richard Wortman is a resident of Barber County, Kansas, whose post office address is Medicine Lodge, Kansas 67104. Plaintiff Hazel Moore is a resident of Alfalfa County, Oklahoma; her post office address is Cherokee, Oklahoma 73728. Defendant is a corporation doing business in Barber County, Kansas. Defendant is referred to as "Sun" in this Petition and such designation is intended to include the defendant corporation and any predecessor corporations or subsidiary corporations in making gas payments hereinafter mentioned.

2) Plaintiffs are Sun royalty owners and are members of a class composed of all producers and royalty

owners to whom Sun has made payment of or should make payment of proceeds or royalties purportedly suspended pending finality of Federal Power Commission Opinions Nos. 586, 699, 699H, 749, 749C, 770 and 770A and any other FPC Opinions or FERC Opinions. Copies of various checkstubs and notices going back as far as November, 1968, and not paid until 1977, 1978 and 1979 are hereto attached and made a part hereof.

3) Plaintiffs bring this action individually and as representatives of all that class of producers and royalty owners referred to under Paragraph 2 above. Plaintiffs are informed and believe the class which they seek to represent is composed of over 10,000 members, whose names and addresses are known to Sun, but not to plaintiffs, and number makes it impracticable to join all of them in this action. Plaintiffs are informed and believe that formerly Sun paid the plaintiffs and other class members all of their proportionate share of the proceeds of gas produced and sold; that beginning several years ago, and just when, plaintiffs do not know, Sun began receiving higher prices for the gas sold, but continued paying the class members at the old price. Plaintiffs are informed that Sun commingled such so-called "suspended" money with its own money and invested and used the same for its own purposes. Sun has not paid the plaintiff class or anyone else for the use of such "suspended monies" held by Sun during these periods of time. The Federal Power Commission issued its Opinion No. 586 on September 18, 1970, No. 699 on June 21, 1974, No. 699H on September 4, 1974, No. 749 on December 2, 1975, No. 749C on July 19, 1976, No. 770 on July 27, 1976, No. 770A on November 5, 1976, which approved price escalations in rates for gas paid to Sun which Sun did not pay out to the class

members until dates several years thereafter, the last date being in July, 1979. The total amount of class members' money so held and finally paid over to the class members is not known to plaintiffs, but is known to defendant and is estimated by plaintiffs to be over \$1,000,000.

4) The plaintiffs and other members of the class are entitled to recover from Sun for its use of the money on any one or more of the following theories or for the following reasons:

A. The doctrine of unjust enrichment. (*Shutts v. Phillips Petroleum Company*, 222 Kan. 527 P.2d 1292, Syl. 19; U. S. Cert. denied, 434 U.S. 1068, Rehearing denied 435 U.S. 961.)

B. The equitable principle that when one makes actual use of money belonging to another, it is required to pay interest on the money so retained and used. (*Shutts*, supra, Syl. 20.)

C. Equitable principles require that class members receive the same treatment as gas purchasers as to interest required by the Federal Power commission on "FPC suspense monies". (*Shutts*, supra, Syl. 21.)

D. Sun made an express agreement by filing corporate undertaking with the Federal Power Commission to pay interest on the "suspended proceeds". (*Shutts*, supra, Page 564.)

5) The essential question of law and fact involved in this action is common to all members of the class identified above and is as follows:

"Should Sun pay interest to class members on such 'suspended' monies at the rate of seven percent per annum to October 10, 1974, and at the rate of nine

percent per annum thereafter until paid over to class members, in accordance with FPC Order No. 513A, issued July 14, 1976?"

6) The claim of these plaintiffs is typical of all claims of the general class identified above and plaintiffs can and will fairly and adequately protect the interests of such class and all members of the class.

7) Prosecution of separate actions by individual members of the class identified above would result in multiple lawsuits; would create a risk of inconsistent or varying adjudications concerning individual members of the class and could establish incompatible standards of conduct for defendant.

8) The amount of interest due these plaintiffs from defendant is probably less than \$1,000.00 each and it is believed and so alleged by the plaintiffs that many of the members of the class identified above have small amounts at stake. As a practical matter, many members of the class would have no remedy if this action could not proceed as a class action.

9) Sun has systematically and purposely withheld the money due the plaintiffs and other members of the class and has used the money for its own purposes. Such action by Sun without compensation to the class members for the use of the money has affected all members of the class in exactly the same way, except as to the amount due each, which can be easily computed through Sun's records and computers. A class action is the only suitable means of redress to the plaintiffs and other class members.

10) The essential question at issue is the matter of collection of interest on money used by Sun for several years and there is a community of interest among all

members of the class in this question and in the remedy. There is a "common fund or funds" set up as to the class, subject to recovery in this action. The members of the class are made up of residents and nonresidents of the State of Kansas, the above FPC opinions being nationwide gas pricing regulations. Class members are those affected by the national rates as set up by the FPC opinions above mentioned, excepting as to No. 586, which was defined by FPC as covering the Hugoton-Anadarko area only.

11) Sun may or may not have paid all class members all "suspense monies" due them because of rate increases approved by the various FPC and FERC opinions and should be required to account for and pay the same as well as to pay interest thereon.

WHEREFORE, plaintiff prays for an order of the court finding that this action is maintainable as a class action; for judgment in favor of plaintiffs and other members of the class for accounting for FPC "suspense monies" and payment of the same and for costs of this action, attorneys' fees and expenses, and for all other proper relief.

Chapin, Penny & Goering  
Attorneys at Law  
Chapin Building  
Medicine Lodge, KS 67104  
By /s/ W. Luke Chapin  
Attorneys for Plaintiffs

(Filed October 25, 1979)

IN THE  
DISTRICT COURT OF BARBER COUNTY, KANSAS

RICHARD WORTMAN and	)	
HAZEL MOORE, individually	)	
and as representatives of all	)	
producers and royalty owners	)	
to whom Sun Oil Company has	)	
made or should make payment	)	
of suspended proceeds or roy-	)	Case Number 79 C 40
alties pursuant to FPC Opinions	)	
or FERC,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
SUN OIL COMPANY	)	
(Delaware),	)	
	)	
Defendant.	)	

**ANSWER**

Defendant Sun Oil Company (Delaware), for its answer to plaintiffs' petition, and for its defense, states:

1. The petition fails to state a claim for relief and should be dismissed.
2. All allegations not admitted herein, are denied.
3. Paragraph 1 of the petition is admitted.
4. As to the allegations in paragraphs 2 and 3 of the petition, it is admitted that plaintiffs are royalty owners under certain oil and gas leases owned by defendant. It is denied that plaintiffs are proper representatives of any class, and it is denied that this action may



properly be brought as a class action. It is admitted that defendant held certain portions of proceeds received from sale of gas in suspense for various periods of time, pending the finality of rate orders involved in the FPC opinions referred to in the petition, but it is denied that the amounts held in suspense were subject to payment of royalty thereon until such time as the amounts held in suspense, or portions thereof, were finally determined to be legal proceeds of the sale of gas. On such determination, defendant paid royalty on the amount approved as legal, and defendant was not liable for interest thereon, because the contract obligation to pay principal was not due and owing until that time.

5. Royalties paid on certain suspense funds accruing under FPC Opinion 586 were paid in 1973. Any claims to interest on such payments, or any payments more than three years prior to commencement of this suit, are barred by the statute of limitations.

6. Plaintiffs are barred by estoppel, waiver acquiescence, payment, accord and satisfaction, and by their own conduct in accepting the principal payment without objection or request for interest.

7. As to paragraphs 4 and 5 of the petition, it is admitted that *Shutts v. Phillips Petroleum Company*, 222 Kan. 527, upheld liability for interest on suspense funds, at certain rates, under the facts there involved. However, the laws of other states differ, making this inappropriate as a class action. Texas, for example, imposed a 6% rate of interest under certain facts involving suspense funds, in *Phillips Petroleum Co. v. Stahl Petroleum Co.*, 569 S.W.2d 480. Defendant states that relatively few Sun royalty owners are involved in Kansas gas producing leases, and that most of the royalty owners alleged to

be members of a class actually hold interests in leases located in states other than Kansas or Texas.

8. Alternatively, defendant states that in the event any class is proper in this case, the class must be confined to royalty owners owning interests in leases located in the state of Kansas, under the precautionary rules enunciated by the Kansas Supreme Court.

9. With reference to paragraph 11 of the petition, defendant states that it has paid royalties to its royalty owners on all amounts formerly held in suspense pending final determination by the federal regulatory agency as to the firm, final price to be legally allowed for the sale of gas.

WHEREFORE, defendant prays that the action be dismissed, and that judgment be entered in its favor. Alternatively, no class should be certified, or any class, if certified, should be confined to Kansas royalty owners. Defendant further prays for its costs herein.

William C. Phelps  
Sun Gas Company  
Three NorthPark East  
Box 20  
Dallas, Texas 75221  
- and -

Foulston, Siefkin, Powers &  
Eberhardt  
700 Fourth Financial Center  
Wichita, Kansas 67202  
(316) 267-6371  
By /s/ Gerald Sawatzky  
Attorneys for Defendant

(Certificate of Service Omitted in Printing)



(Filed October 25, 1979)

IN THE  
DISTRICT COURT OF BARBER COUNTY, KANSAS

RICHARD WORTMAN and HAZEL )  
MOORE, Individually and as Represen- )  
tatives of all Producers and Royalty )  
Owners to Whom Sun Oil Company has )  
Made or Should Make Payment of Sus- )  
pended Proceeds or Royalties Pursuant ) No. 79 C 40  
to FPC Opinions or FERC )  
Plaintiffs, )  
vs. )  
SUN OIL COMPANY, a Delaware )  
Corporation )  
Defendant. )

**ANSWERS OF DEFENDANT SUN OIL COMPANY  
(DELAWARE) TO PLAINTIFFS'  
INTERROGATORIES**

NOW COMES Defendant SUN OIL COMPANY (DELAWARE) in response to Plaintiffs' Interrogatories to this Defendant served with a copy of Plaintiffs' Petition, and answers said Interrogatories as follows:

No. 1. According to the corporation's records, how many class members are there in connection with payments under the following FPC opinions:

A. FPC Opinion 586?

ANSWER: There were 4727 interests under 200 properties; however, some owners have interests in more than one of the properties, so that the number of class members is something less than 4,727.

B. FPC Opinions 699 and 699H:

ANSWER: 981

C. FPC Opinions Nos. 770 and 770A?

ANSWER: 1,353

D. FPC Opinions Nos. 749 and 749C?

ANSWER: None

No. 2. Please state the total amounts paid out to class members under each of the following opinions:

A. Under Opinion 586?

ANSWER: \$470,223.05

B. Pursuant to FPC Opinions 699 and 699H?

ANSWER: Approximately \$1,167,000.00

C. FPC Opinions Nos. 770 and 770A?

ANSWER: Approximately \$2,676,000.00

D. FPC Opinions Nos. 749 and 749C?

ANSWER: NONE

E. Are you now holding any FPC or FERC suspense moneys?

ANSWER: Yes

F. If so, how much?

ANSWER: Approximately \$150,000.00

G. Pursuant to what opinion or opinions?

ANSWER: FPC Opinion 595 - not paid due to uncertainty as to ownership or division of interest

No. 3. Please state the applicable rate schedules filed by Sun pertaining to each of the opinions mentioned in Paragraph 2 of Plaintiffs' Petition.

ANSWER: See Exhibit 1 attached

No. 4. Please state the name and address of the officer of your company, the head of department of your company, and the executive or employee of your company in charge of accounting for suspense gas royalties as described in the Plaintiffs' Petition.

ANSWER: John D. West, Manager, Gas Lease Revenue Accounting, Sun Gas Company, III NorthPark East, 8800 North Central Expressway, P. O. Box 20, Dallas, Texas 75221

No. 5. Please state whether or not in paying over any of the money to the class members as described in Paragraph 2 of Plaintiffs' Petition any interest on the proceeds theretofore held in suspense by Sun was paid to the producers or royalty owners.

ANSWER: Yes, in some instances interest was paid in settlement of certain claims, but generally no interest has been paid.

No. 6. Will you, without motion to produce, file true copies of such corporate undertakings or bonds filed with FPC according to FPC Rules and Regulations pertaining to escalated gas prices received by you and subject to refund?

ANSWER: Yes

No. 7. Were the "suspense moneys" placed in any savings account or were they merely placed in the cor-

porate treasury and used the same as any other corporate funds?

ANSWER: No "suspense moneys" were placed in any savings account. Such moneys were placed in the corporate treasury and used the same as other corporate funds.

No. 8. Will you, without motion to produce, furnish copies of your annual reports, 1974-1978, showing profit and loss statements?

ANSWER: Yes

William C. Phelps  
Sun Gas Company  
Three NorthPark East  
P. O. Box 20  
Dallas, Texas 75221  
Foulston, Siefkin, Powers &  
Eberhardt  
700 Fourth Financial Center  
Wichita, Kansas 67202  
Telephone: 316—267-6371  
By /s/ Gerald Sawatzky  
Gerald Sawatzky  
Attorneys for Defendant

(Jurat and Certificate of Service Omitted in Printing)

**EXHIBIT 1**

RECAP OF FERC (FPC) SCHEDULES BY AREA  
INDICATING VARIOUS OPINIONS NOS.  
AFFECTING REFUND OF PROCEEDS

<u>#586</u>	<u>#699</u>	<u>#749</u>	<u>#770</u>	<u>#595</u>
	1		1	
	6		6	6
		8		8
	9		9	9
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	60			

RECAP OF FERC (FPC) SCHEDULES BY AREA  
INDICATING VARIOUS OPINIONS NOS.  
AFFECTING REFUND OF PROCEEDS

<u>#586</u>	<u>#699</u>	<u>#749</u>	<u>#770</u>	<u>#595</u>
		61		
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RECAP OF FERC (FPC) SCHEDULES BY AREA  
INDICATING VARIOUS OPINIONS NOS.  
AFFECTING REFUND OF PROCEEDS

<u>#586</u>	<u>#699</u>	<u>#749</u>	<u>#770</u>	<u>#595</u>
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RECAP OF FERC (FPC) SCHEDULES BY AREA  
INDICATING VARIOUS OPINIONS NOS.  
AFFECTING REFUND OF PROCEEDS

<u>#586</u>	<u>#699</u>	<u>#749</u>	<u>#770</u>	<u>#595</u>
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	203	203	203	



RECAP OF FERC (FPC) SCHEDULES BY AREA  
INDICATING VARIOUS OPINIONS NOS.  
AFFECTING REFUND OF PROCEEDS

<u>#586</u>	<u>#699</u>	<u>#749</u>	<u>#770</u>	<u>#595</u>
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	205	205	205	
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		240		

RECAP OF FERC (FPC) SCHEDULES BY AREA  
INDICATING VARIOUS OPINIONS NOS.  
AFFECTING REFUND OF PROCEEDS

<u>#586</u>	<u>#699</u>	<u>#749</u>	<u>#770</u>	<u>#595</u>
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	242		242	
246				
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	273			273
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	277			277
278	278			
		280		280
	282		282	282
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	284			284
285		285		
	287	287	287	287

RECAP OF FERC (FPC) SCHEDULES BY AREA  
INDICATING VARIOUS OPINIONS NOS.  
AFFECTING REFUND OF PROCEEDS

<u>#586</u>	<u>#699</u>	<u>#749</u>	<u>#770</u>	<u>#595</u>
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RECAP OF FERC (FPC) SCHEDULES BY AREA  
INDICATING VARIOUS OPINIONS NOS.  
AFFECTING REFUND OF PROCEEDS

<u>#586</u>	<u>#699</u>	<u>#749</u>	<u>#770</u>	<u>#595</u>
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	330	330		
332	332	332		
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		343		
	344	344	344	
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349	349			
	350			
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RECAP OF FERC (FPC) SCHEDULES BY AREA  
INDICATING VARIOUS OPINIONS NOS.  
AFFECTING REFUND OF PROCEEDS

<u>#586</u>	<u>#699</u>	<u>#749</u>	<u>#770</u>	<u>#595</u>
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RECAP OF FERC (FPC) SCHEDULES BY AREA  
INDICATING VARIOUS OPINIONS NOS.  
AFFECTING REFUND OF PROCEEDS

<u>#586</u>	<u>#699</u>	<u>#749</u>	<u>#770</u>	<u>#595</u>
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RECAP OF FERC (FPC) SCHEDULES BY AREA  
INDICATING VARIOUS OPINIONS NOS.  
AFFECTING REFUND OF PROCEEDS

<u>#586</u>	<u>#699</u>	<u>#749</u>	<u>#770</u>	<u>#595</u>
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RECAP OF FERC (FPC) SCHEDULES BY AREA  
INDICATING VARIOUS OPINIONS NOS.  
AFFECTING REFUND OF PROCEEDS

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RECAP OF FERC (FPC) SCHEDULES BY AREA  
INDICATING VARIOUS OPINIONS NOS.  
AFFECTING REFUND OF PROCEEDS

<u>#586</u>	<u>#699</u>	<u>#749</u>	<u>#770</u>	<u>#595</u>
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RECAP OF FERC (FPC) SCHEDULES BY AREA  
INDICATING VARIOUS OPINIONS NOS.  
AFFECTING REFUND OF PROCEEDS

<u>#586</u>	<u>#699</u>	<u>#749</u>	<u>#770</u>	<u>#595</u>
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(Filed December 4, 1979)

IN THE  
DISTRICT COURT OF BARBER COUNTY, KANSAS

RICHARD WORTMAN and HAZEL	)	
MOORE, Individually and as Represen-	)	
tatives of all Producers and Royalty	)	
Owners to Whom Sun Oil Company has	)	
Made or Should Make Payment of Sus-	)	
pended Proceeds or Royalties Pursuant	)	No. 79 C 40
to FPC Opinions or FERC	)	
	)	
	)	Plaintiffs,
VS.	)	
SUN OIL COMPANY, a Delaware	)	
Corporation	)	
	)	Defendant

**SUPPLEMENTAL ANSWERS OF DEFENDANT SUN  
OIL COMPANY (DELAWARE) TO PLAINTIFFS'  
SUPPLEMENTAL INTERROGATORIES OF  
NOVEMBER 9, 1979**

NOW COMES Defendant SUN OIL COMPANY (DELAWARE) in response to Plaintiffs' Supplemental Interrogatories to this Defendant, and answers said Interrogatories as follows:

1. Referring to FERC (FPC) schedules indicating refund of proceeds under FPC Opinion 749, attached to answers to first interrogatories, please state the following:

A. Under which rate schedule numbers were higher rates collected:

ANSWER: Sun Rate Schedule Numbers 94, 353, 431, 479, 505, 512, 516 and 529

B. Under which of the same rate schedules was a portion of the royalty payments withheld?

ANSWER: None

C. As to any increased proceeds not paid currently, when were such increased proceeds paid over to the royalty owners, to how many of them, and in what total amounts?

ANSWER: Not applicable since no portion of payments were withheld.

2. Please furnish copies of any and all general notices, memoranda or letters that went out to royalty owners pertaining to gas royalty payments under FERC (FPC) Opinions 586, 699, 749 and 770, showing dates of mailing as to each such notice, memoranda or letter.

ANSWER: Copies of all general notices, memoranda and letters which were mailed to royalty owners pertaining to gas royalty payments under FERC (FPC) Opinions 586, 699, 749, and 770 are attached. Letters relating to FPC Opinion 699 are undated but were mailed in October 1975. Other notices or letters were mailed on the approximate date appearing thereon. The only notice pertaining to FPC Opinion 586 was the notice which was included with checks mailed to interest owners, a copy of which was attached to the check referred to in Interrogatory No. 6.

3. Will you without motion to produce please furnish copies of all rate schedules filed as listed under Opinion No. 749 in answers to the first interrogatories beginning with No. 8 and ending with No. 583?

ANSWER: No. Because of the number of rate schedules involved and the bulk thereof reproduction would be very costly. Copies of such rate schedules are in the offices of SUN GAS COMPANY, in Dallas, Texas, and will be made available for inspection at that location during regular office hours upon proper request.

4. Please furnish copy of corporation undertaking as stated you would do in answer to first set of interrogatories, No. 6.

ANSWER: Attached is a copy of the corporate undertaking filed under Sun Rate Schedule No. 94. Corporate undertakings, in substantially the same form, were filed under each of the rate schedules when required.

5. Please furnish copies of annual reports, 1974 - 1978, showing profit and loss statements in accordance with your answer to Interrogatory No. 8 in first set of interrogatories.

ANSWER: Copy of the annual reports of Sun Oil Company and Sun Company, Inc., for the years 1974 - 1978 are attached.

6. With reference to the attached check stub and notice, check being dated August 28, 1978, to Owner No. 986030, representing gas royalties November, 1968, through November, 1970, please give detail of such payment as shown in the check stub and state pursuant to which FPC Opinion such payment was made.

ANSWER: This check covers payment of the payee's share of gas royalties suspended under

FPC Opinion 586 for the period stated, under the J. M. Wortman Lease in Barber County, Kansas. This lease was owned and operated by Sunray DX Oil Company prior to its merger into Sun Oil Company. The detailed work papers upon which the amount due was calculated cannot be located.

7. Do you agree that FPC Order No. 513A issued July 14, 1976, copy of which is attached, governs payment of interest on any moneys to be refunded to gas purchasers, pursuant to Opinions 699, 749, and 770?

ANSWER: This interrogatory is objected to on the grounds that it calls for a legal conclusion

William C. Phelps  
Sun Gas Company  
Three NorthPark East  
P. O. Box 20  
Dallas, Texas 75221  
Foulston, Siefkin, Powers &  
Eberhardt  
700 Fourth Financial Center  
Wichita, Kansas 67202  
Telephone: 316—267-6371  
By /s/ Gerald Sawatzky  
Gerald Sawatzky  
Attorneys for Defendant

(Jurat and Certificate of Service Omitted in Printing)

(SUNOCO)  
SUN OIL COMPANY

Southland Center, Post Office Box 2880,  
Dallas, Texas 75221 (214) 744-4411

December 8, 1976

To Royalty Owners:

Re: Federal Power Commission  
Opinion No. 770-A

On July 27, 1976, the Federal Power Commission issued Opinion No. 770 establishing nationwide rates for "new gas." On the basis of the contentions set forth in applications for rehearing, and after further examination by the Commission, Opinion No. 770-A was issued November 5, 1976, clarifying and amending Opinion No. 770.

Appeals of this decision have been filed with the Third, Fifth, Ninth, Tenth and District of Columbia Circuit Courts of Appeal; therefore, neither the rates nor the categories of gas established in Opinion No. 770-A, will be finally determined until the settlement of court appeals.

In light of court review, Sun will continue to make payment of royalty based on the applicable rates previously approved by the Federal Power Commission. Sun will account to you fully for any additional sums which may be due you in the event the applicability of Opinion No. 770-A is finally upheld.

Very truly yours,

Sun Oil Company

(SUNOCO)  
SUN GAS COMPANY

Southland Center, Post Office Box 2880,  
Dallas, Texas 75221 (214) 744-4411

September 9, 1976

To: Interest Owners With Whom Sun Makes Settlements  
for Gas Moving Under Contracts Subject to FPC  
Opinion No. 749

Re: Federal Power Commission  
Opinion No. 749

In Opinion No. 749, the Federal Power Commission established just and reasonable rates for natural gas sold from wells commenced and dedicated prior to January 1, 1973. Appeals of this decision have been filed with the Court of Appeals for the Fifth Circuit and, therefore, the rates established in Opinion No. 749 will not become final until completion of that Court review.

Although the rates established by Opinion No. 749 may be reduced as a result of these Court appeals, Sun will make payment for gas which qualifies based upon the rates established in Opinion No. 749.

In the event judicial proceedings result in the establishment of a lower rate than that upon which Sun is basing its payments and where required by the Federal Power Commission to refund with interest any part of payments made to you in excess of the rate finally permitted, we will expect to recoup same on a reasonable basis.

Yours very truly,

Sun Oil Company (Delaware)



(SUNOCO)

North American Exploration  
and Production Group  
Production Division  
Natural Gas Sales

SUN OIL COMPANY

Southland Center, Post Office Box 2880  
Dallas, Texas 75221 (214) 744-4411

Re: Federal Power Commission  
Order No. 699-H  
Replacement Contracts

To Royalty Owners:

As you are probably aware, the Federal Power Commission issued Opinion No. 699-H last year which set a National Rate for "new gas." It contained a provision to extend this rate to "old gas" covered by replacement contracts dated after January 1, 1973. Your recent royalty payments have been based upon gas prices covered by such a replacement contract.

Until now, Sun has paid royalties to you based on the new National Rate although Opinion No. 699-H is involved in litigation attempting to reduce this National Rate. Recently another suit has been filed challenging the specific applicability of the National Rate to replacement contracts dated after January 1, 1973.

In light of this recent suit, Sun will discontinue payment of royalty based upon the National Rate and instead will make royalty payments on the basis of the applicable rate previously approved by the Federal Power Commission. We will account to you fully for any sums which

may be due you in the event the applicability of the National Rate to replacement contracts is finally upheld.

In the event the judicial proceedings result in the establishment of a lower rate than that upon which Sun has heretofore based its payments to you and we are required by the Federal Power Commission to refund any part of payments made to you in excess of the rate finally permitted we will expect to recoup all amounts ordered to be refunded, on a reasonable basis.

Sun Oil Company (Delaware)

(SUNOCO)

North American Exploration  
and Production Group  
Production Division  
Natural Gas Sales

SUN OIL COMPANY

Southland Center, Post Office Box 2880,  
Dallas, Texas 75221 (214) 744-4411

Re: Federal Power Commission  
Order No. 699-H

To Royalty Owners:

The Federal Power Commission has issued Opinion No. 699-H which prescribes a National Rate ceiling for qualifying natural gas sold in interstate commerce under certain conditions after January 1, 1973. However, in view of present pending court appeals of this decision, these rates will not become final until completion of litigation.

Although there is a possibility that the rates established by Opinion No. 699-H may be reduced as a result of the court review, Sun is paying royalty on gas which qualifies for the new rate (except in those instances where a replacement contract serves as the basis for collection of the National Rate) based on the assumption that Opinion No. 699-H will be confirmed. A separate letter is being sent to those royalty owners involved where replacement contracts serve as the basis for collection of the National Rate.

In the event judicial proceedings result in the establishment of a lower rate than that upon which Sun has

based its payments, and we are required by the Federal Power Commission to refund any part of payments made to you in excess of the rate finally permitted, we will expect to recoup all amounts ordered to be refunded, on a reasonable basis.

In view of all of the uncertainties that now exist and will continue to exist until the order is judicially reviewed, we feel that the plan outlined above is to the best interest of both Sun and the royalty owners.

Sun Oil Company (Delaware)

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

In the Matter of )  
 ) Docket No. RI63-264  
Sun Oil Company )

AGREEMENT AND UNDERTAKING OF SUN OIL COMPANY TO COMPLY WITH THE PROVISIONS OF SUBSECTION (C) OF SECTION 154.102 OF THE COMMISSION'S REGULATIONS UNDER THE NATURAL GAS ACT

Sun Oil Company is filing concurrently herewith a Motion Pursuant to Section 4(e) of the Natural Gas Act to make effective Supplement 3 to its FPC Gas Rate Schedule 94.

In conformity with the requirements of Section 154.102 of the Commission's Regulations Under the Natural Gas Act, Sun Oil Company hereby agrees and undertakes to comply with the provisions of subsection (c) of said section, insofar as it is applicable to the adjustment filed in this proceeding and has caused this agreement and undertaking to be executed and sealed in its name by its officers thereupon duly authorized in accordance with the terms of the resolution of its Board of Directors, a certified copy of which is appended hereto this 22nd day of May, 1963.

Sun Oil Company  
By /s/ (Illegible)  
Vice President

ATTEST:

/s/ (Illegible)  
Secretary

Corporate Seal

(Filed January 11, 1983)

IN THE  
DISTRICT COURT OF BARBER COUNTY, KANSAS

RICHARD WORTMAN and HAZEL )  
MOORE, Individually and as repre- )  
sentatives of all royalty owners to )  
whom Sun Oil Company or Sun Gas )  
Company has made payment of )  
suspended royalties pursuant to ) Case No. 79 C 40  
FPC Opinions or FERC Opinions, )  
Plaintiffs, )  
vs. )  
SUN OIL COMPANY, a Delaware )  
Corporation, )  
Defendant. )

**JOURNAL ENTRY ON CLASS CERTIFICATION  
AND NOTICE**

NOW, on this 5th day of January, 1983, this matter comes on for hearing on plaintiffs' motion to certify as a class action and determine notice. The following appearances are made:

Attorneys for plaintiffs: W. Luke Chapin, Chapin, Penny & Goering, P. O. Box 148, Medicine Lodge, Kansas 67104; Ed Moore, Ginder & Moore, 202 South Grand, Cherokee, Oklahoma 73728;

Attorneys for Defendant: R. Douglas Reagan of Foulston, Siefkin, Powers & Eberhardt, 700 Fourth Financial Center, Wichita, Kansas 67202.

THEREUPON, the motion is presented and argued to the court, the matters having been previously briefed



by counsel. The court, having read the briefs and heard the argument of counsel, and based upon the files and records in this matter and the evidence presented, finds, and it is ordered, adjudged and decreed as follows:

1) The proposed class of parties plaintiff is numerous and exceeds 2,300 members and an actual joinder of all members is impracticable.

2) The claims of plaintiffs are typical of the claims of all of the members of the class except that each owner may be entitled to a different amount of interest and the interest to each owner, if allowed, would be too small to enable each to file a separate action.

3) The only questions of law and fact in this case are common to the entire proposed class, in that the sole issue appears to be whether defendant is liable for interest on the money received by it from purchasers of gas pursuant to Opinions 586, 699 and 770 of the Federal Power Commission and withheld by defendant for certain periods after August 23, 1974.

4) This action should be certified as a class action and plaintiff class is defined as follows:

"All royalty owners and overriding royalty owners to whom Sun Oil Company (Sun) made payment of suspended royalties after August 23, 1974 through 1979, pursuant to Federal Power Commission Opinions Nos. 586, 699, 699H, 770 and 770A."

5) Notice of the pendency of this action, its nature and effects of any judgment shall be given to all members of the class. The form of such notice, which is approved by the court, is attached hereto and made a part hereof. The defendant shall provide to the plain-

tiffs a list of all members of the class and their mailing addresses as shown by defendant's records. The defendant shall provide to plaintiffs, if possible, pressure sensitive mailing labels for each member of the class which shall contain thereon their individual name and address. The plaintiffs shall cause the notice to be mailed to all members of the class by first class mail and plaintiff shall bear all expense thereof, same to be made a part of the costs of this case. The envelopes shall contain the following return address:

Return to: Chapin, Penny & Goering, Box 148, Medicine Lodge, Kansas 67104.

The notice is to be dated March 1, 1983, and request for exclusion must be filed by April 5, 1983.

6) If any of the notices sent to class members are returned by the postal service as nondeliverable, the plaintiffs will notify defendant of the names; and defendant is to further check its records and provide plaintiffs with all information it has pertaining to such class member, so that notice may be provided to such person, and/or person's heirs, devisees or assigns.

7) The plaintiffs' Motion to Certify as a Class is hereby sustained. All prerequisites of a class action according to Kansas statutes have been met. Although there may be only a limited number of Kansas residents involved, as stated in *Shutts v. Phillips Petroleum Company*, 222 Kan. 527, this class action is the only way in which the "small man" can find relief.

/s/ Clarence E. Renner  
Clarence E. Renner  
District Judge

(Counsel's Approval of Form Omitted in Printing)



IN THE  
DISTRICT COURT OF BARBER COUNTY, KANSAS

RICHARD WORTMAN and HAZEL	)	
MOORE, Individually and as representa-	)	
tives of all royalty owners to whom Sun	)	
Oil Company has made or should make	)	
payment of suspended proceeds or roy-	)	
alties pursuant to FPC Opinions or FERC	)	No. 79C40
Opinions,	)	
	)	
Plaintiffs,	)	
vs.	)	
SUN OIL COMPANY, a Delaware	)	
Corporation,	)	
Defendant.	)	

**NOTICE OF CLASS ACTION SUIT**

TO: All royalty owners and overriding royalty owners to whom Sun Oil Company (Sun) made payment of suspended royalties in 1975 through 1979, pursuant to Federal Power Commission Opinion Nos. 586, 699, 699H, 749, 749C, 770 and 770A.

This suit was filed in August, 1979, by plaintiffs, individually and on behalf of all royalty owners and overriding royalty owners to whom this notice is directed. Plaintiffs ask judgment against defendant for the payment of interest on suspended royalties paid by defendant in 1975 through 1979 attributable to increased gas sales prices received and withheld and used by defendant subsequent to August 23, 1974. The leases involved are Sun's leases, nationwide. There are in excess of 1,000 gas royalty owners and overriding royalty owners who are members

of the proposed class and the above mentioned payments were in excess of \$3,000,000.00.

Defendant Sun has denied any liability to plaintiffs or members of the class herein described.

The court has held that this action is to be maintained as a class action. Accordingly:

1. The court will include as members of plaintiff class herein all of the gas royalty owners and overriding royalty owners addressed above; provided, however, any person or concern so included may be filing a written request to the Clerk of the District Court of Barber County, Kansas, Medicine Lodge, Kansas 67104, on or before the 5th day of April, 1983, be excluded from the class unless upon notice and after hearing and for stated reasons the court finds that inclusion is essential to the fair and efficient adjudication of the controversy. Any class member, if so desired, may appear in the case in person or through his own counsel; otherwise, plaintiffs' counsel will represent him as a member of plaintiff class.

2. Judgment in this action, whether for the plaintiff class or for the defendant, will be binding on all class members except those who may be excluded as above stated. Class members excluded will not be entitled to share in the benefit of any judgment or settlement entered or concluded favorable to plaintiff class.

3. Plaintiffs' attorneys' fees are contingent on recovery. If the plaintiffs are successful, the court will allow a reasonable attorneys' fee for plaintiffs' attorneys, not exceeding 1/3rd, out of the interest fund created. If plaintiffs are unsuccessful, there will be no allowance of attorneys' fees, costs or expenses against you.

4. If you want further information, please do not call the Judge or Clerk of the Court, but call or write one of the attorneys listed below.

Dated: March 1, 1983.

Clarence E. Renner,  
District Judge

Attorneys for Plaintiffs:  
  
W. Luke Chapin  
Chapin, Penny & Goering  
P. O. Box 148  
Medicine Lodge, KS 67104  
(316) 886-5611  
  
Ed Moore  
Ginder & Moore  
202 S. Grand  
Cherokee, OK 73728  
(405) 596-2106

Attorneys for Defendant:  
  
Gerald Sawatzky  
Foulston, Siefkin, Powers  
& Eberhardt  
700 Fourth Financial Center  
Wichita, KS 67202  
(316) 267-6371  
  
William C. Phelps  
Sun Gas Company  
Three North Park East  
Dallas, TX 75221

(Filed May 23, 1983)

IN THE  
DISTRICT COURT OF BARBER COUNTY, KANSAS

RICHARD WORTMAN and HAZEL	)	
MOORE, Individually and as representa-	)	
tives of all producers and royalty owners	)	
to whom Sun Oil Company has made or	)	
should make payment of suspended pro-	)	
ceeds or royalties pursuant to FPC	)	No. 79C40
Opinions or FERC,	)	
	)	Plaintiffs,
vs.	)	
SUN OIL COMPANY, a Delaware	)	
Corporation,	)	
	)	Defendant.

**JOURNAL ENTRY ON MOTION FOR WITHDRAWAL**

ON this 18th day of May, 1983, at nine o'clock a.m., the motion of attorneys for plaintiff class to withdraw as attorneys for plaintiff class member Phillips Petroleum Company comes regularly on for hearing. Plaintiff class appears by and through W. Luke Chapin of Chapin, Penny & Goering, Medicine Lodge, Kansas. There are no other appearances, except that Sun Oil Company has written the court through its attorney, R. Douglas Reagan of Foulston, Siefkin, Powers & Eberhardt, requesting that it be excused from appearing as it has no interest in the motion; and Phillips Petroleum Company has written to the court through T. L. Cabbage II, its attorney, expressing its views of the motion.

THEREUPON, the motion is presented to the court by counsel for plaintiff class. The court, having reviewed

the motion, having heard the arguments of counsel, and being well and fully advised in the premises, finds that plaintiff class counsel might be representing conflicting interests or taking inconsistent positions in the matter; but that Phillips Petroleum Company, defendant in Seward County, Kansas, Case No. 79C113, and a plaintiff class member in this case, has consented, after full disclosure, to plaintiff class representing Phillips in this case; and that motion of plaintiff class attorneys for withdrawal of representation of Phillips should be overruled.

IT IS THEREFORE BY THE COURT ORDERED that motion of plaintiffs' attorneys to withdraw from representation of class member Phillips Petroleum Company be and it is hereby overruled.

/s/ Clarence E. Renner  
Clarence E. Renner  
District Judge

(Counsel's Approval of Form Omitted in Printing)

(Filed September 6, 1983)

IN THE  
DISTRICT COURT OF BARBER COUNTY, KANSAS

RICHARD WORTMAN and HAZEL )	
MOORE, Individually and as repre- )	
sentatives of all royalty owners to )	
whom Sun Oil Company has made )	
or should make payment of suspended )	
proceeds or royalties pursuant to )	
FPC Opinions or FERC Opinions, )	Case No. 79C40
Plaintiffs, )	
vs. )	
SUN OIL COMPANY, a Delaware )	
corporation, )	
Defendant. )	

**PRE-TRIAL ORDER**

On the 2 day of Sept., 1983, a pre-trial conference was had in the above entitled case, plaintiff class being represented by W. Luke Chapin of Chapin, Penny & Goering, Medicine Lodge, Kansas, and Ed Moore of Ginder & Moore, Cherokee, Oklahoma; and the defendant, Sun Oil Company, being represented by Gerald Sawatzky and R. Douglas Reagan of Foulston, Siefkin, Powers & Eberhardt, 700 Fourth Financial Center, Wichita, Kansas.

WHEREUPON, after considering the arguments and stipulations of counsel, the pleadings, depositions, interrogatories, admissions and exhibits submitted, the court made the following order.



## I. PARTIES

The plaintiffs in this action are Richard Wortman, who is a gas royalty owner under a Kansas oil and gas lease to whom Sun accounts for his gas royalties, and Hazel Moore, who is a gas royalty owner under an Oklahoma oil and gas lease to whom Sun accounts for her gas royalties. Both appear individually and as representatives of a class of persons defined as follows:

"All royalty owners and overriding royalty owners to whom Sun Oil Company (Sun) made payment of suspended royalties after August 23, 1974, through 1979, pursuant to Federal Power Commission Opinion Nos. 586, 699, 699H, 770 and 770A." (Journal Entry on Class Certification dated January 5, 1983.)

Plaintiffs will hereinafter, either individually or as representatives of the class, be referred to as "Wortman". The defendant is Sun Oil Company, hereinafter referred to as "Sun".

## II. NATURE OF THE CASE

This class action against Sun seeks to recover interest on additional or suspense gas royalties paid by Sun at various times from and after August 23, 1974, relating to the above mentioned FPC and FERC Opinion Nos. 586, 699, 699H, 770 and 770A, to its royalty owners and overriding royalty owners subsequent to approval by FPC and FERC and the courts of certain proposed rate increases on gas sales in the six states of the United States where Sun is engaged in producing natural gas. (Sellers Affidavit dated December 21, 1982.)

## III. AMENDMENTS

Both Wortman and Sun request permission, and such permission is granted, to amend their pleadings to conform to the contentions made and theories presented in this Pre-Trial Order, and the same is considered done.

## IV. STIPULATIONS

1) Both Wortman and Moore have received royalties previously suspended pursuant to one or more of the above mentioned FPC or FERC Opinions.

2) Sun did not pay any interest on the suspended royalties which were eventually paid to the plaintiffs and the plaintiff class pursuant to the above mentioned FPC and FERC Opinions.

3) Opinion No. 586 involves only the Hugoton-Anadarko area as defined by FPC and which consists of all of the State of Kansas and parts of the States of Oklahoma and Texas.

4) Beginning with Opinion 699, the FERC eliminated the area by area pricing scheme it had been employing and established a nationwide rate for qualified gas. Additionally, Opinions 699, 699H, 770 and 770A set certain rates governing the sale of natural gas in interstate commerce. During the pendency of subsequent administrative and court appeals involving these opinions, Sun began receiving money at the increased rates set forth in these opinions but did not pay the increase out to its royalty owners.

5) Through the use of notice slips accompanying regular royalty checks, Sun informed the royalty owners that until final approval of the various opinions, payment of the increased proceeds would be suspended. Copies



of notices are attached, marked Exhibits 1 to 3. (Answers to Interrogatories dated November 9, 1979.)

6) Under Opinion 586, there were 4,727 interests paid \$470,223.05; but it is believed that only about \$13,000.00 has been paid since 1973, this money having been accumulated November, 1968, through November, 1970, but not paid out to royalty owners until on or about August 28, 1978. (Supplemental Answers of Defendant Sun to Plaintiffs' Supplemental Interrogatories of November 9, 1979; and Sellers Affidavit of December 21, 1982.)

7) Under Opinions 699 and 699H, 981 interest holders nationwide received \$1,167,000.00 in suspense royalties in July, 1976, same having been accumulated from about January, 1975. (Sellers Affidavit of December 21, 1982.)

8) Under Opinions 770 and 770A there were about 1,353 interest holders, nationwide, who received suspended royalties of about \$2,676,000.00, same having been accumulated from December of 1976, (Sellers Deposition page 35 and paid out principally in April, 1978.)

9) Sun has admitted that no interest was paid on proceeds held in suspense that were ultimately paid to the royalty owners. (Answers to First Interrogatories, No. 5 and Sellers Deposition, Page 24.)

10) The court has ordered that plaintiffs Wortman and Moore are members of a class of approximately 2,300 members of royalty owners and overriding royalty owners who received suspense royalties from Sun as a result of Opinion Nos. 586, 699, 699H, 770 and 770A pertaining to gas rates. First class mail notice has been mailed to all of such royalty owners in accordance with pressure sensitive mailing labels furnished for each member of the class by Sun. Plaintiffs have caused the notices to be mailed

and has borne the expense thereof. As a result of the notice, 105 members of the class have specifically excluded.

## V. PLAINTIFFS' CONTENTIONS

1) Wortman and plaintiff class contend that as to all gas royalty owners to whom Sun was accounting, Sun collected all proceeds from the proposed increased rates including that fraction or percentage increase which belonged either to royalty owners or to purchasers and could in no event belong to Sun. The money belonging to others was deposited to cash in Sun's general account and commingled with its other funds during the suspension periods.

2) On termination of suspension periods according to the stipulations, Sun again began paying all of its royalty owners and overriding royalty owners to whom it accounted, royalties based on the increased prices and also paid the back royalties of suspense royalties on FPC or FERC monies.

3) FPC or FERC suspense monies were placed in the corporate treasury and used the same as any other corporate funds. (First Interrogatories, No. 7; and George Wehrmaker Deposition, Page 9.)

4) Meanwhile, Sun made substantial profits, after taxes and interest expenses, the amount for the United States being \$367,000,000.00 in 1979. (Sun annual reports and George Wehrmaker Deposition, Pages 6-7.)

5) Sun handled the suspense royalties for all royalty owners nationwide in the same manner and they were paid out at the same time in the same manner. (Sellers Deposition, Page 21.)

6) Sun furnished to the Federal Power Commission an agreement and undertaking to comply with the provisions of Subsection C of §154.102 of the Commission's regulations under the Natural Gas Act, copy of which is attached hereto marked Exhibit 4, same having been furnished in connection with supplemental answers of defendant Sun to plaintiffs' supplemental interrogatories of November 9, 1979.

7) Copy of 18 CFR §154.67 and Federal Reserve Bulletins on prime rate charged by banks are hereto attached.

8) As to the approximate \$13,000.00 paid out in 1978 under Opinion 586, plaintiff class is entitled to interest on the same from the time first suspended in the 1960's until paid out. Interest was at varying rates, according to FPC order, 18 CFR 154.67, at 7% simple interest until October 10, 1974, at 9% simple interest between October 10, 1974, and date of payout in 1978.

9) As to interest on other suspended royalties under Opinions 699, 699H, 770 and 770A, Wortman and plaintiff class contend they are entitled to interest in the same manner as refund obligations under CFR 18, 154.67(d) at the rate of seven percent (7%) simple interest per annum until October 10, 1974; at a rate of nine percent (9%) simple interest per annum between October 10, 1974, and September 20, 1979; and at an average prime rate for each calendar quarter thereafter, compounded quarterly at the arithmetic mean, to the nearest 100th of one percent, of the prime rate values published in the Federal Reserve Bulletin, for the fourth, third and second months preceding the first month of the calendar quarter.

10) Wortman and the plaintiff class contend there is only one general issue of law and fact in the case: namely, the payment of interest at the rates above stated, and compounded quarterly beginning October 1, 1979, on the common fund which Sun expressly contracted and agreed to pay to the gas purchasers, if required, according to its express agreement and corporate undertaking with the FERC, or to its royalty and overriding royalty owners according to the United States Rule, as set forth in *Shutts, Executor v. Phillips Petroleum Company*, 222 Kan. 527, at Pages 564-569.

## VI. DEFENDANT'S CONTENTIONS

Defendant contends that it paid the royalty owing to the plaintiff class members at the time the royalty became due and payable. Defendant was not obliged to pay royalty on amounts held in suspense, until such time as it was finally determined to be legal proceeds of sale. At that time defendant promptly paid the royalties when due.

The statute of limitations bars any recovery related to amounts paid out more than three years prior to the commencement of this action; or in the alternative, more than four years prior to commencement (Texas law, Article 5527 Vernon's Civil Statutes); or in the second alternative, more than five years prior to commencement.

Plaintiffs are barred by estoppel, waiver, acquiescence, payment, accord and satisfaction, and in accepting the principal payment without objection or request for interest.

If any interest is owing, it would be at the rates specified in each of the various states where gas was produced; not at the rates claimed by plaintiffs. For instance, in

Texas, the rate is 6% per annum simple interest running from a date 30 days after it is due and payable. (Article 5069-1.03, Vernon's Civil Statutes).

Defendant preserves its objection to the propriety of the class certified herein; and preserves its objection that the certification relating to absent class members in other states is a denial of due process to the absent members, and to this defendant. Further, the contact of Kansas royalty owners is so minimal and the number so small as to require this action to be limited to Kansas royalty owners. Out of state royalty owners have no contact with Kansas, and Kansas courts are without jurisdiction of them under the facts of this case.

Defendant further contends that certain royalty payments were deferred because of disputes as to title, or delay by royalty owners in processing transfer or inheritance papers, or changes of address. No interest is owing on such suspensions of royalty payments.

#### VII. PLAINTIFFS' WITNESSES

The plaintiffs may call the following witnesses at the trial of this case, either as live witnesses or by deposition.

1. Richard Wortman, plaintiff
2. Hazel Moore, plaintiff
3. Edwin H. Sellers, Dallas, Texas
4. George Wehrmaker, Dallas, Texas

#### VIII. DEFENDANT'S WITNESSES

E.H. Sellers

#### IX. DEFENDANT'S EXHIBITS

Exhibits attached to affidavits and answers to interrogatories.

Any additional exhibits will be listed within 30 days after entry of this order.

#### X. PLAINTIFFS' EXHIBITS

1. Any and all exhibits attached to Sun's Answers to Interrogatories and Requests for Admissions and Answers to Interrogatories.

2. 18 CFR §154.67

3. Federal Reserve Bulletins, June 1979 to date

#### XI. CONDUCT OF TRIAL

The parties hereto waive the right to a jury trial on any of the issues herein and consent to the trial of all such issues to the court.

#### XII. SETTLEMENT POSSIBILITIES

There are no settlement negotiations pending.

This being a class action, any proposed settlement would require court approval.

#### XIII. PRE-TRIAL ORDER SUPERSEDES PLEADINGS

The Pre-Trial Order entered herein shall control the further course of this litigation and shall supersede all of the pleadings previously filed herein.

/s/ Clarence E. Renner  
District Judge

(Counsel's Approval of Form Omitted in Printing)



IN THE  
DISTRICT COURT OF BARBER COUNTY, KANSAS

RICHARD WORTMAN and HAZEL )	
MOORE, Individually and as rep- )	
resentatives of all producers and )	
royalty owners to whom Sun Oil )	
Company has made or should make )	
payment of suspended proceeds or )	
royalties pursuant to FPC Opinions )	Case No. 79C40
or FERC, )	
Plaintiffs, )	
-vs- )	
SUN OIL COMPANY, a Delaware )	
Corporation, )	
Defendant. )	

**TRANSCRIPT OF PROCEEDINGS**

PROCEEDINGS had before the Honorable Clarence E. Renner, Judge of the District Court of Barber County, Kansas, at Medicine Lodge, Kansas, on the 13th day of October, 1983.

**APPEARANCES:**

The plaintiffs, RICHARD WORTMAN, et al., appeared in person and by Mr. Luke Chapin, CHAPIN, PENNY & GOERING, Chapin Building, Medicine Lodge, Kansas; and Mr. Ed Moore, Attorney at Law, Cherokee, Oklahoma.

The defendant, SUN OIL COMPANY, appeared by Mr. Gerald Sawatzky, FOULSTON, SIEFKIN, POWERS & EBERHARDT, 700 Fourth Financial Center, Wichita, Kansas; and Mr. William Phelps, Attorney at Law, Dallas, Texas.

\* \* \*

\* \* \* [7] "Sun has admitted that no interest was paid on proceeds held in suspense that were ultimately paid to the royalty owners." No. 10, relates to the notice and number of numbers. "The court has ordered that plaintiff Wortman and Moore are members of a class of approximately 2,300 members." Now, the court will recall that it was said in the order that Sun would furnish pressure sensitive labels to the plaintiff to mail out notices which they did, but instead of 2,300 members there were actually 3,159 notices that, or gummed labels that were received and we mailed out 3,159 letters to "royalty owners and overriding royalty owners who received suspense royalties from Sun as a result of Opinion Nos. 586, 699, 699H, 770 and 770A pertaining to gas rates. First class mail notice has been mailed to all of such royalty owners in accordance with pressure sensitive mailing labels furnished for each member of the class by Sun. Plaintiffs have caused the notices to be mailed and have borne the expense thereof. As a result of the notice, 105 members of the class have specifically excluded. . .", and according to our count, "(51 addressees did not receive the notice) leaving total notices received by class members of 3,003." According to George Wehrmaker's deposition, and we attach certain pages from that deposition, the money from FPC suspense gas was used by Sun just as any other cash or money used to make a profit [8] and if we might turn to that deposition, which is attached as Exhibit 4, or I don't know how the court would prefer that I do this, it is rather short. I could read it or I could simply refer to certain testimony in that.

THE COURT: I have read the deposition and I think it may expedite the matter if you want to just refer to the specific testimony that you wish to inform about.

MR. CHAPIN: All right.



THE COURT: Unless—Mr. Sawatzky, is that agreeable with you?

MR. SAWATZKY: Well, that's agreeable, basically I think our position is that most of that testimony is really irrelevant. The fact that Sun made a profit is undisputed. I don't think whether they made a profit or didn't make a profit is material to the question of whether interest is or isn't owing.

MR. CHAPIN: Well, of course we think it is material. It's a part of our case that Sun used our royalty owners' money and used it to make a profit and so we simply want to show they made a profit and Mr. Wehrmaker's deposition does show that together with the exhibits, which is Sun's annual report for 1979, and the court has that with the other papers and we do offer the annual report of Sun for 1979 at this time.

MR. SAWATZKY: Well, we don't really think it's

\* \* \*

\* \* \*

[11] "Q. Used to make a profit?"

"A. I hope so, yes."

And that's all of the direct. Going back then we refer to the annual report in paragraph 14, meanwhile Sun made substantial profits while using royalty owners money. The amount for the United States being preentered \$367,000,000.00, that profit in 1979, according to Sun's annual report. No. 15: "Sun handled the suspense royalty owners nation-wide in the same manner and they were paid out at the same time in the same manner." No. 16: "Sun furnished to the Federal Power Commission an agreement and undertaking to comply with the provisions of Subsection (c) of §154.102 of the Commission's regulations under the Natural Gas Act, copy of which is attached hereto marked Exhibit "7", same having been

furnished in connection with supplemental answers of Sun. . .", and we now offer Exhibit 7, which is a copy of the obligation of Sun to take care of interest obligations to purchasers pursuant to the subsection mentioned.

THE COURT: Now 7 is what?

MR. CHAPIN: Well, that—

THE COURT: —I don't have an exhibit marked 7 on this pre-trial or trial brief.

MR. CHAPIN: There should be. I think there is at the end of it.

[12] THE COURT: I have it, yes, thank you.

MR. CHAPIN: That's Sun's obligation filed with the FPC.

THE COURT: You offer it?

MR. CHAPIN: Yes.

THE COURT: Any objection?

MR. SAWATZKY: No objection.

THE COURT: 7 will be admitted.

MR. CHAPIN: Now, we further offer the next exhibit, which is a copy of 18 FPC 154.67 and Federal Reserve Bulletins on prime rates charged by banks and this shows the obligation of a gas producer to pay interest on any monies that might be refunded to gas purchasers. According to *Shutts 1*, that obligation extends to royalty owners in that interest in the same manner—damages in the form of interest in the same manner are due royalty owners and so we do offer this particular 18 FPC and certificate of the Federal Reserve Bulletins. We don't have them on down to date, but the bulletins attached show prime rate charged by banks on short term business loans, which is the applicable rate in figuring interest which is to be compounded quarterly. We offer this as Exhibit 8.

MR. SAWATZKY: Well, Your Honor, I—this Federal Reserve Bulletin, I don't quite understand it. I'm

\* \* \*

\* \* \*

\* \* \* [33] I wasn't sure exactly what portions, I guess, those are attached to those findings, but the depositions are fairly short and I guess Mr. Sellers we need not present his deposition, because he was here on the stand. We would like to have them considered.

MR. CHAPIN: No objection, Your Honor.

MR. SAWATZKY: Now, we would like also the Court to take judicial notice of the interest rates applicable in these other five states, other than the State of Kansas. In Texas—

MR. CHAPIN: —Mr. Sawatzky, you don't have copies of the applicable interest laws?

MR. SAWATZKY: Well, I have some of them.

THE COURT: Let me make a suggestion other than what you are referring to at this moment. Do you have any other witnesses to offer?

MR. SAWATZKY: No, Your Honor.

THE COURT: All right, in order to clarify and state each parties' position I think I will ask in this case that each side submit their statement of facts and conclusions of law, which will help the Court in reaching a decision and perhaps you might incorporate those by way of either attached exhibits or by your own statement as to what your position is. Would that expedite things any?

\* \* \*

\* \* \* [44] open for reconsideration depending on the facts of this case, but more importantly the interest rates of the other states, we just don't think can be ignored. It would be not only a misapplication of law, but in our opinion a denial of due process and a violation of Federal Constitution principles involving the relations between the different states for one state to ignore the laws of the other state as to the matters for which that state is

entirely interested directly and entirely is merely a procedural forum by which a class action should result in certain relief and that relief should not exceed what those people understand their local law which is applicable. Thank you.

THE COURT: All right. I will wait for your memorandums.

MR. SAWATZKY: How much time can we have, about thirty days?

THE COURT: 30? Well, it's an old case, surely you know what your case is by now. Is that what it will take for you, Mr. Chapin?

MR. SAWATZKY: Well, Your Honor, I could work it over the weekend and probably have it in fifteen days, but I always like to have enough time so I don't have to ask for more.

THE COURT: All right, is that all right with you, thirty days?

\* \* \*

IN THE  
DISTRICT COURT OF BARBER COUNTY, KANSAS  
**PLAINTIFF'S EXHIBIT 1, TRIAL,**  
**OCTOBER 13, 1983**  
EXHIBIT "1"

(SUNOCO)                      North American Exploration  
                                    and Production Group  
                                    Production Division  
                                    Natural Gas Sales

SUN OIL COMPANY

Southland Center, Post Office Box 2880,  
Dallas, Texas 75221 (214) 744-4411

Re: Federal Power Commission  
Order No. 699-H  
Replacement Contracts

To Royalty Owners:

As you are probably aware, the Federal Power Commission issued Opinion No. 699-H last year which set a National Rate for "new gas." It contained a provision to extend this rate to "old gas" covered by replacement contracts dated after January 1, 1973. Your recent royalty payments have been based upon gas prices covered by such a replacement contract.

Until now, Sun has paid royalties to you based on the new National Rate although Opinion No. 699-H is involved in litigation attempting to reduce this National Rate. Recently another suit has been filed challenging the specific applicability of the National Rate to replacement contracts dated after January 1, 1973.

In light of this recent suit, Sun will discontinue payment of royalty based upon the National Rate and instead will make royalty payments on the basis of the applicable rate previously approved by the Federal Power Commission. We will account to you fully for any sums which may be due you in the event the applicability of the National Rate to replacement contracts is finally upheld.

In the event the judicial proceedings result in the establishment of a lower rate than that upon which Sun has heretofore based its payments to you and we are required by the Federal Power Commission to refund any part of payments made to you in excess of the rate finally permitted, we will expect to recoup all amounts ordered to be refunded, on a reasonable basis.

Sun Oil Company (Delaware)

IN THE  
DISTRICT COURT OF BARBER COUNTY, KANSAS  
**PLAINTIFF'S EXHIBIT 2, TRIAL,**  
**OCTOBER 13, 1983**  
EXHIBIT "2"

(SUNOCO)  
SUN OIL COMPANY

Southland Center Post Office Box 2880,  
Dallas, Texas 75221 (214) 744-4411

December 8, 1976

To Royalty Owners:

Re: Federal Power Commission  
Opinion No. 770-A

On July 27, 1976, the Federal Power Commission issued Opinion No. 770 establishing nationwide rates for "new gas." On the basis of the contentions set forth in applications for rehearing, and after further examination by the Commission, Opinion No. 770-A was issued November 5, 1976, clarifying and amending Opinion No. 770.

Appeals of this decision have been filed with the Third, Fifth, Ninth, Tenth and District of Columbia Circuit Courts of Appeal; therefore, neither the rates nor the categories of gas established in Opinion No. 770-A, will be finally determined until the settlement of court appeals.

In light of court review, Sun will continue to make payment of royalty based on the applicable rates previously approved by the Federal Power Commission. Sun will account to you fully for any additional sums which may be due you in the event the applicability of Opinion No. 770-A is finally upheld.

Very truly yours,  
Sun Oil Company

IN THE  
DISTRICT COURT OF BARBER COUNTY, KANSAS  
**PLAINTIFF'S EXHIBIT 3, TRIAL,**  
**OCTOBER 13, 1983**

EXHIBIT "3"

NOTICE TO INTEREST OWNERS

The enclosed check represents your interest in FERC (FPC) suspended proceeds from former Sunray DX properties, per various opinions and rulings, pending final approval. Closing date for period covered appears on the check. Since that date, royalties have been paid on prices set forth in the various opinions.

Sun Oil Company  
Royalty Disbursements



EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY  
AT THE TIME OF FILMING. IF AND WHEN A  
BETTER COPY CAN BE OBTAINED, A NEW FICHE  
WILL BE ISSUED.



Q. Mr. Wehrmaker, you have handed me a copy of Sun Company's 1979 annual report. Referring to [5] that, where does Sun Gas Company's financial information show?

A. It doesn't; it's consolidated.

Q. How many companies are involved in this consolidated report for 1979?

A. I have no idea; a bunch.

Q. Are they listed on the back page of the report?

A. Those would be the major ones, but there are— Within that we have approximately 7 or 8 (/s/ G.W.) subsidiary companies in the Sun Gas module. And I know many of the other divisions or subsidiaries have similar or even more.

Q. Do you have a profit and loss statement and balance sheet for Sun Gas Company for 1979?

A. Yeah; yes, I do.

Q. Is it available? Could we see that?

A. I'm not at liberty to release that per corporate policy.

MR. PHELPS: That is unaudited.

A. It's unaudited. We are a division of Sun Delaware, and for release of that information you would have to get permission from the controller of Sun Company.

Q. Is there anything in this report you have [6] handed me specifically pertaining to Sun Gas Company?

A. Regarding their results of operations or—

Q. Right.

A. No, not that could be identified as Sun Gas Company.

Q. Is there anything specifically referring to Sun Oil and Sun Gas oil and gas operations?

A. Only in the back in the profile of the company, there is the oil and gas group.

Q. Where is that?

A. That is on this backfold-out section where you have the first column there; you have oil and gas group. That gives you the consolidated sales for the division of Sun Del.

Q. Let's refer to that then; sales and other operating income for the United States; what is that total figure for 1979?

A. That would be 0.7 billion seven hundred and seventy one million sales and other operating income.

Q. And profit contribution before interest and after taxes for the United States; how much is that?

A. That is—For the United States would be three hundred and sixty-seven million.

Q. What is meant "profit contribution before interest and after taxes"?

[7] A. That would be—basically it would be net income as we understand it but they would exclude any intercompany interest that we would earn on our internal banking company, Claymont Investment Corporation.

Q. Next figure is profit contributions per share in dollars; how much is that for '79?

A. Six dollars and twenty-two cents per share; that is per Sun Company share.

Q. And do you know about what the market value of Sun Company shares was at the end of '79?

A. I don't think it's in here.

MR. SAWATZKY: On the market exchange, New York Stock Exchange?

A. The high for the fourth quarter was seventy-two and seven-eighths dollars per share.

Q. And what was the low?

A. The low in that fourth quarter was fifty-six dollars (/s/ G.W.) and three-eighths per share.

Q. Next figure is capital program United States; what is that figure?

A. That is three hundred and eighty-three million.

Q. For 1979?

A. For 1979.

[8] Q. That is capital surplus, reserves, and that sort of thing?

A. No, that would be your investment in fixed assets, basically; investments, acquisitions.

Q. Well, your next figure is assets, and how much is that?

A. That is two billion thirty-two million; this is for the United States.

Q. Right. How do you distinguish that from the capital program?

A. The capital program would be the amount invested in 1979. The asset figure would be the balance at the end of the year.

Q. That would be the total cumulative?

A. Cumulative, right.

Q. Now, we have been talking today and other employees have testified concerning FPC suspense moneys on gas royalties. Are you familiar with that term?

A. Yes.

Q. As Sun Gas received moneys, FPC suspense moneys, pursuant to Opinion 699, FPC Opinion 699, and pursuant to FPC Opinion 770, and any other applicable Opinion where they were suspended, how were those moneys handled? Were they handled like any other corporate money, put in the corporate treasury?

[9] A. I believe so, yes. That was back at—what period of time are you talking about?

Q. I'm talking about from '74 on up to date.

A. Currently that is what would happen today. I have only been at the gas company since June of 1978, so prior to that I really can't answer that question.

Q. As far as you know—

A. So far as I know, that would be the way it would be treated.

Q. The matter of suspense refers only to an accounting system, is that correct?

A. Yes.

Q. In other words, the money is not separated out and deposited in a separate bank account?

A. That's correct.

Q. Or separate investments of any kind?

A. That's correct.

Q. The money from FPC suspense gas was used then by Sun Gas Company just as any other cash or money?

A. I believe so, yes.

Q. Used to make a profit?

A. I hope so, yes.

MR. CHAPIN: That is all I have [10] of you. Thank you.

#### CROSS-EXAMINATION

BY MR. SAWATZKY:

Q. That generally was held as a liability on the books, was it not, anything subject to refund, up until the time of FPC Orders became final and final arrangements were made concerning that money?

A. Regarding the moneys, yes. We would have reported a liability. Our books would not have taken it into income on the income statement, yes, that's correct.



## REDIRECT EXAMINATION

BY MR. CHAPIN:

Q. Well, it would also be reported as an asset as well as a liability, would it not?

A. Cash, yes.

Q. But you are saying it was not—Sun's part of it was not taken into account as profit? Is that what you are saying?

A. That's correct.

Q. Until the finality of the Opinion?

A. That's correct.

Q. Now, so far as the royalty owners' part or anyone other than Sun's part is concerned, that never would be a part of Sun's profit, would it?

[11] A. No.

Q. The money was subject to being refunded to the gas purchaser or paid out to others, isn't that right?

A. That's correct.

MR. CHAPIN: That is all. Thank you.

/s/ George Wehrmaker

George Wehrmaker

(Jurat Omitted in Printing)

# Sun Company 1979

IN THE  
DISTRICT COURT OF BARBER COUNTY, KANSAS  
PLAINTIFF'S EXHIBIT 5, TRIAL,  
OCTOBER 13, 1983



In 1979, employees  
of Sun Company  
produced goods and  
services amounting to  
\$10.8 billion.

Sun's taxes  
were \$716 million  
on these revenues.

Earnings totaled  
\$700 million.

This is a report on  
how that happened.

# Consolidated Statements of Income

SUN COMPANY, INC. AND CONSOLIDATED SUBSIDIARIES

For the Years Ended December 31

(Millions of Dollars)

## Revenues

### Sales and Other Operating Income:

Refined Products .....	\$ 6,185.1	\$ 4,400.8	\$ 4,118.9	\$ 3,624.5	\$ 3,173.2
Crude and Condensate .....	84.7	206.3	204.0	118.2	206.0
Natural Gas .....	612.2	537.7	486.7	347.1	286.9
Coal and Coke .....	224.3	181.4	141.0	123.4	133.8
Resales of Purchased Oil .....	2,693.0	1,478.7	998.1	818.3	397.0
Related Products and Services and Other .....	833.4	534.8	477.1	317.3	224.4
Shipbuilding and Repair .....	33.3	153.9	11.4	82.3	44.0
<b>Other Income</b> .....	10,666.0	7,493.6	6,437.2	5,431.1	4,465.3
	131.8	99.2	87.8	64.0	45.2
	10,800.8	7,592.8	6,525.0	5,495.1	4,510.5

## Costs and Expenses

Costs and Operating Expenses .....	8,179.1	5,527.9	4,577.2	3,725.5	2,647.8
Selling, General and Administrative Expenses .....	634.3	522.8	451.6	371.9	358.5
Taxes, Other than Income Taxes (Note 3) .....	222.2	210.9	196.4	200.4	351.2
Depreciation, Cost Depletion, Amortization and Retirements .....	458.2	406.4	402.4	392.1	439.0
Interest and Debt Expense .....	122.3	89.5	72.7	67.1	67.2
Interest Capitalized .....	(9.2)	—	—	—	(2.8)

### Income Before Provision for Income Taxes

Provision for Income Taxes (Note 4):	9,606.9	6,757.5	5,700.3	4,757.0	3,860.9
U.S. Federal — Current .....	1,193.9	835.3	824.7	738.1	649.6
Foreign and Other — Current .....	236.3	216.6	238.1	207.8	77.5
Deferred .....	137.9	138.9	120.7	95.4	248.1
	119.8	65.1	54.2	3.9	81.5
	491.0	420.6	413.0	367.1	407.1

### Net Income (Notes 1 and 2)

Less Dividend Requirements on Preferred Stock .....	699.9	414.7	411.7	381.0	242.5
	8.4	13.0	24.7	36.1	36.5

<b>Net Income Applicable to Common Stock</b> .....	\$ 691.5	\$ 401.7	\$ 387.0	\$ 344.9	\$ 206.0
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### \*\*Net Income per Share of Common Stock:

After Provision for Cash Dividends on Preferred Stock .....	\$11.77	\$7.08	\$7.52	\$7.08	\$4.22
Assuming Full Conversion of Preferred Stock .....	\$11.15	\$6.60	\$6.47	\$5.81	\$3.69

### Weighted Average Number of Shares (Adjusted):

Common Stock .....	58,748,784	56,708,881	51,437,438	48,706,227	48,788,754
Assuming Full Conversion of Preferred Stock .....	62,769,385	62,833,566	63,623,864	65,587,997	65,720,191

### Cash Dividends Paid on Common Stock (Millions):

Sum .....	\$162.2	\$140.9	\$107.0	\$70.4	\$41.1
Pooled Company Prior to Combination (Note 1) .....	\$2.0	\$1.2	\$5	\$8	\$1.0

### \*\*Cash Dividends per Share of Common Stock

**Dividends Paid per Share of Common Stock, Historical:	\$2.95	\$2.73	\$2.26	\$1.61	\$1.00
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Cash .....	—	—	—	—	6%
Stock .....	—	—	—	—	2,472,349

### \*\*Stock Dividend Shares Distributed

\* Reclassified to conform to the 1979 presentation.

\*\* Net income per share of common stock is based on the weighted average number of shares outstanding during each year adjusted for a pooling of interests in 1979. Net income and cash dividends per share of common stock have been adjusted for a stock dividend in 1975. Dividends per share of common stock have not been adjusted for the pooling of interests described in Note 1.

(See Accompanying Notes)

# Consolidated Balance Sheets

SUN COMPANY, INC. AND CONSOLIDATED SUBSIDIARIES

Assets At December 31	1979	1978
(Millions of Dollars)		

## Current Assets

Cash (including Time Deposits, and Certificates of Deposit of \$386.6 in 1979 and \$144.0 in 1978)	\$ 453.0	\$ 200.8
Short-Term Investments, at cost which approximates market	271.9	15.9
Accounts and Notes Receivable, net of allowances (Note 5)	884.4	783.5
Inventories (Note 6)	760.7	527.3
<b>Total Current Assets</b>	<b>2,370.0</b>	<b>1,527.5</b>
<b>Long-Term Receivables and Investments (Note 7)</b>	<b>749.5</b>	<b>603.2</b>
Properties, Plants and Equipment, net of accumulated depreciation, cost depletion and amortization of \$3,110.4 in 1979 and \$2,863.3 in 1978 (Note 8)	3,983.5	3,642.1
Deferred Charges and Other Assets (Note 9)	357.6	279.3
<b>Total Assets</b>	<b>\$7,460.6</b>	<b>\$6,052.1</b>

## Liabilities and Stockholders' Equity At December 31

### Current Liabilities

Accounts Payable	\$1,307.0	\$ 766.9
Accrued Liabilities	219.1	153.8
Notes Payable (Note 10)	12.1	18.0
Current Portion of Long-Term Debt (Note 11)	68.7	95.8
Taxes, Other than Income Taxes	87.2	73.3
Income Taxes	174.1	151.4
<b>Total Current Liabilities</b>	<b>1,868.2</b>	<b>1,259.2</b>
<b>Indebtedness to Unconsolidated Subsidiaries</b>	<b>95.6</b>	<b>75.2</b>
<b>Long-Term Debt (Note 11)</b>	<b>765.5</b>	<b>696.4</b>
<b>Capitalized Lease Obligations (Note 12)</b>	<b>29.3</b>	<b>32.0</b>
<b>Deferred Income Taxes</b>	<b>627.4</b>	<b>481.3</b>
<b>Other Deferred Credits and Liabilities (Note 13)</b>	<b>304.7</b>	<b>271.5</b>
<b>Commitments and Contingent Liabilities (Note 14)</b>		

### Stockholders' Equity (Note 15)

Preferred Stock, \$2.25 cumulative convertible, par value \$1 per share		
Authorized — 3,017,264 shares; Issued, 1979 — 3,017,060 shares		
(aggregate involuntary liquidation value \$156.9); Issued, 1978 — 5,083,614 shares	3.0	5.1
Common Stock, par value \$1 per share		
Authorized — 100,000,000 shares; Issued, 1979 — 60,028,829 shares;		
Issued, 1978 — 60,027,422 shares	60.0	60.0
Capital in Excess of Par Value	1,467.9	1,558.9
Earnings Employed in the Business	2,230.7	1,733.4
	3,791.6	3,357.4

### Less Common Stock Held in Treasury, at cost

1979 — 501,649 shares; 1978 — 2,797,946 shares	21.7	120.9
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### Total Stockholders' Equity

	3,769.9	3,236.5
<b>Total Liabilities and Stockholders' Equity</b>	<b>\$7,460.6</b>	<b>\$6,052.1</b>

The Company follows the Successful Efforts Method of Accounting for Oil and Gas Operations.



IN THE  
DISTRICT COURT OF BARBER COUNTY, KANSAS

**PLAINTIFF'S EXHIBIT 7, TRIAL,  
OCTOBER 13, 1983**

EXHIBIT "7"

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

In the Matter of	)	Docket No. RI63-264
Sun Oil Company	)	

AGREEMENT AND UNDERTAKING OF SUN OIL  
COMPANY TO COMPLY WITH THE PROVISIONS  
OF SUBSECTION (C) OF SECTION 154.102 OF  
THE COMMISSION'S REGULATIONS UNDER THE  
NATURAL GAS ACT

Sun Oil Company is filing concurrently herewith a Motion Pursuant to Section 4(c) of the Natural Gas Act to make effective Supplement 3 to its FPC Gas Rate Schedule 94.

In conformity with the requirements of Section 154.102 of the Commission's Regulations Under the Natural Gas Act, Sun Oil Company hereby agrees and undertakes to comply with the provisions of subsection (c) of said section, insofar as it is applicable to the adjustment filed in this proceeding and has caused this agreement and undertaking to be executed and sealed in its name by its officers thereupon duly authorized in accordance with the terms

of the resolution of its Board of Directors, a certified copy of which is appended hereto this 23rd day of May 1963.

Sun Oil Company  
By /s/ (Illegible)  
Vice President

ATTEST:

/s/ (Illegible)  
Secretary

Corporate Seal

IN THE  
DISTRICT COURT OF BARBER COUNTY, KANSAS  
**PLAINTIFF'S EXHIBIT 8, TRIAL,**  
**OCTOBER 13, 1983**  
EXHIBIT "8"

CODE OF FEDERAL REGULATIONS

Conservation of Power and Water Resources

Revised as of April 1, 1981

**§ 154.67 Suspended changes in rate schedules; motions to make effective at end of period of suspension; procedure.**

(a) *Effect of suspended changes in rate schedules.*  
If a rate suspension proceeding initiated under section 4(e) of the Natural Gas Act has not been concluded and an order issued by the Commission at the expiration of the suspension period, the proposed change of rate, charge, classification, or service shall go into effect upon motion of the pipeline company proposing the change so long as the pipeline company complies with all requirements of this section. The proposed rate, charge, classification, or service shall become effective as of the date of receipt of such motion by the Commission or the expiration of the suspension period, whichever is later. Three copies of the motion shall be filed with the Commission.

(b) *Undertaking to comply.* (1) Concurrently with the motion to make the suspended rate effective, the company shall file an undertaking, described in paragraph (b)(2) of this section, to comply with the provisions of paragraphs (c) and (d) of this section. Three copies of the undertaking shall be filed with the Commission.

Unless notified to the contrary by the Secretary of the Commission within 30 days from the date of filing, such motion and undertaking shall be deemed to be satisfactory and to have been accepted for filing.

(2) The pipeline company shall file with the Secretary an undertaking to comply with the terms of this section. Such undertaking shall be signed by a responsible officer of the company, evidenced by proper authority from the Board of Directors, and accompanied by a certificate showing service of copies thereof upon the purchasers under the rate schedules to be made effective by the motion of the company, and shall conform to the model undertaking below:

AGREEMENT AND UNDERTAKING OF [COMPANY] TO  
COMPLY WITH THE TERMS AND CONDITIONS OF SEC-  
TION 154.67 OF THE COMMISSION'S RULES AND REG-  
ULATIONS UNDER THE NATURAL GAS ACT IN RESPECT  
TO [COMPANY'S] MOTION TO HAVE ITS PROPOSED  
TARIFF SHEETS IN DOCKET NO. RP PLACED INTO  
EFFECT

In conformity with the requirements of § 154.67 of the Commission's rules and regulations under the Natural Gas Act [Company], hereby agrees and undertakes to comply with the terms and conditions of said section of the Commission's rules and regulations and has caused this agreement and undertaking to be executed and sealed in its name by its officer(s) thereupon duly authorized in accordance with the terms of the resolution of its Board of Directors, a certified copy of which is appended hereto this ..... day of ....., 19.....

By: [Company].

Attest: .....

(c) *Reports.* Any pipeline company whose proposed increased rates or charges were suspended and have gone into effect pending final order of the Commission pursuant to section 4(e) of the Natural Gas Act shall:

(1) Keep accurate account of all amounts received under the increased rates or charges which became effective after the suspension period, for each billing period, specifying by whom and in whose behalf such amounts are paid;

(2) Submit annually on or before April 30 of each year to the Commission, in writing (original and one copy) and under oath the following information concerning each billing period, for each purchaser for the previous calendar year:

(i) The monthly billing determinants of natural gas sold and transported to each purchaser under the suspended agreements or tariffs;

(ii) The revenues which would result from such sales if they were computed under the rates in effect immediately prior to the date the proposed increased rates or charges became effective;

(iii) The revenues resulting from such sales as computed under the proposed increased rates or charges that became effective after the suspension period; and

(iv) The difference between the revenues computed in paragraphs (c)(2)(ii) and (iii) of this section.

(3) The Director of the Office of Pipeline and Producer Regulation may require reports on a more frequent basis in individual cases when it is deemed appropriate and necessary to do so, or upon request where good cause is shown.

(d) *Refunds.* (1) Any pipeline company that collects rates or charges pursuant to this section shall refund at such time in such amounts and in such manner as may be required by final order of the Commission the portion of any increased rates or charges found by the Commission in that proceeding not to be justified, together with interest as required in paragraph (d) (2) of this section.

(2) Interest shall be computed from the date of collection until the date refunds are made as follows:

(i) At a rate of seven percent simple interest per annum on all excessive rates or charges held prior to October 10, 1974;

(ii) At a rate of nine percent simple interest per annum on all excessive rates or charges held between October 10, 1974 and September 30, 1979; and

(iii) (A) At an average prime rate for each calendar quarter on all excessive rates or charges held (including all interest applicable to such rates and charges) on or after October 1, 1979. The applicable average prime rate for each calendar quarter shall be the arithmetic mean, to the nearest one-hundredth of one percent, of the prime rate values published in the Federal Reserve Bulletin, or in the Federal Reserve's "Selected Interest Rates" (Statistical Release G, 13), for the fourth, third, and second months preceding the first month of the calendar quarter.

(B) The interest required to be paid under paragraph (d) (2) (iii) (A) of this section shall be compounded quarterly.

(3) Any pipeline company required to make refunds pursuant to this section shall bear all costs of such refunding.

(4) Until the pipeline company makes the refunds as may be required by order of the Commission, the undertaking required by this section shall remain in full force and effect.

(Sec. 16, Natural Gas Act, 15 U.S.C. 7170; sec. 309, Federal Power Act, 16 U.S.C. 825h; Department of Energy Organization Act, Pub. L. 95-91; E.O. 12069, 42 FR 46267)

[44 FR 53503, Sept. 14, 1979, as amended at 45 FR 3890, Jan. 21, 1980]



FEDERAL RESERVE

BULLETIN

Perspectives on the Food and Agricultural Situation  
Monetary Policy, Money Supply  
and the Federal Reserve's Operating Procedures

## 33 PRIME RATE CHARGED BY BANKS on Short-Term Business Loans

Percent per annum

Effective date	Rate	Effective Date	Rate	Month	Average rate	Month	Average rate
1981—May 4	19.00	1981—Oct. 5	19.00	1980—July	11.48	1981	17.15
11	19.50	13	18.00	Aug.	11.12	May	19.61
19	20.00	Nov. 3	17.50	Sept.	12.23	June	20.03
22	20.50	9	16.50	Oct.	13.79	July	20.79
June 3	20.00	17	17.00	Nov.	16.06	Aug.	20.50
July 8	20.50	20	16.50	Dec.	20.35	Sept.	20.08
Sept. 15	20.00	24	16.00	1981—Jan.	19.43	Oct.	18.45
22	19.50	Dec. 1	15.75	Feb.	18.05	Nov.	16.64
				Mar.		Dec.	15.75

## 34 TERMS OF LENDING AT COMMERCIAL BANKS Survey of Loans Made, November 2-7, 1981

Item	All sizes	Size of loan (in thousands of dollars)					500-999	1,000 and over
		1-24	25-49	50-99	100-499	100-499		
SHORT-TERM COMMERCIAL AND INDUSTRIAL LOANS								
1 Amount of loans (thousands of dollars)	\$25,466,901	\$853,739	\$639,132	\$579,473	\$2,158,438	\$814,291	\$20,421,829	
2 Number of loans	161,627	115,558	20,039	8,992	12,122	1,275	3,641	
3 Weighted-average maturity (months)	1.6	3.0	2.8	3.9	3.4	3.0	1.2	
4 Weighted-average interest rate (percent per annum)	17.23	19.95	19.19	19.65	19.13	18.64	16.73	
5 Interquartile range <sup>1</sup>	16.14-18.06	18.25-21.55	18.25-20.85	18.27-21.15	18.25-20.22	17.50-19.65	15.99-17.30	
Percentage of amount of loans								
6 With floating rate	35.5	27.9	48.2	56.5	57.0	72.1	31.1	
7 Made under commitment	48.1	31.3	35.9	35.8	45.9	71.9	48.8	
8 With no stated maturity	15.9	10.1	15.3	17.1	19.9	35.2	15.0	
LONG-TERM COMMERCIAL AND INDUSTRIAL LOANS								
9 Amount of loans (thousands of dollars)	\$2,438,209	\$317,491			\$688,950	\$205,534	\$1,226,234	
10 Number of loans	27,160	23,639			2,811	319	391	
11 Weighted-average maturity (months)	37.6	29.4			34.0	37.1	41.8	
12 Weighted-average interest rate (percent per annum)	18.94	19.60			21.22	18.52	17.55	
13 Interquartile range <sup>1</sup>	17.50-19.56	18.00-20.50			18.00-20.50	17.50-19.75	16.72-18.90	
Percentage of amount of loans								
14 With floating rate	56.3	48.0			33.1	85.6	66.6	
15 Made under commitment	54.1	36.3			27.2	69.5	71.2	
CONSTRUCTION AND LAND DEVELOPMENT LOANS								
16 Amount of loans (thousands of dollars)	\$1,420,394	\$155,847	\$192,683	\$187,702	\$425,106	\$459,036		
17 Number of loans	23,437	12,668	5,497	2,616	2,406	250		
18 Weighted-average maturity (months)	9.9	7.6	9.9	5.7	11.5	11.1		
19 Weighted-average interest rate (percent per annum)	19.46	19.86	19.60	20.43	20.03	18.34		
20 Interquartile range <sup>1</sup>	18.54-20.75	19.00-21.00	18.77-19.90	18.50-21.74	19.56-20.82	17.12-19.90		
Percentage of amount of loans								
21 With floating rate	55.3	17.6	21.2	45.2	48.5	92.8		
22 Secured by real estate	82.4	95.9	98.5	98.9	78.9	67.5		
23 Made under commitment	38.5	16.4	11.6	16.8	28.2	75.6		
24 With no stated maturity	10.2	3.6	2.3	4.3	4.3	23.7		
Type of construction								
25 1-to 4-family	45.8	79.6	55.2	63.4	57.3	12.6		
26 Multifamily	5.0	1.2	1.6	2.8	3.7	9.8		
27 Nonresidential	49.2	19.1	43.2	33.8	39.0	77.7		
LOANS TO FARMERS								
28 Amount of loans (thousands of dollars)	\$1,260,648	\$156,504	\$179,965	\$197,569	\$162,025	\$301,018	\$263,546	
29 Number of loans	64,345	41,247	12,442	5,909	2,448	1,919	380	
30 Weighted-average maturity (months)	5.8	5.8	7.3	5.5	5.7	5.6	4.9	
31 Weighted-average interest rate (percent per annum)	18.76	18.52	18.79	18.59	18.40	19.04	18.93	
32 Interquartile range <sup>1</sup>	17.72-19.56	17.72-19.44	17.72-19.54	17.72-19.36	17.72-19.06	18.10-20.12	18.00-20.15	
By purpose of loan								
33 Feeder livestock	18.50	18.56	18.19	18.35	18.41	19.14	19.10	
34 Other livestock	18.66	18.23	19.50	18.77	15.05	19.20	19.11	
35 Other current operating expenses	18.88	18.67	19.04	18.74	18.47	19.03	18.63	
36 Farm machinery and equipment	18.11	18.00	17.94	17.98	18.70	19.03	18.63	
37 Other	18.87	18.68	19.13	19.31	18.28			

1. Interest rate range that covers the middle 50 percent of the total dollar amount

of loans made.

2. Fewer than 10 sample loans.

NOTE: For more detail, see the Board's E-2(111) statistical release.

## 1.33 PRIME RATE CHARGED BY BANKS on Short-Term Business Loans

Percent per annum

Effective date	Rate	Effective Date	Rate	Month	Average rate	Month	Average rate
1981—May 19	20.00	1981—Nov. 3	17.50	1981—Oct.	13.79	1981—July	20.39
22	20.50	9	17.00	Nov.	16.06	Aug.	20.50
June 3	20.00	17	16.50	Dec.	20.35	Sept.	20.08
July 8	20.50	20	16.50	1981—Jan.	20.16	Oct.	18.45
Sept. 15	20.00	24	16.00	Feb.	19.43	Nov.	16.84
22	19.50	Dec 1	15.75	Mar.	18.05	Dec.	15.75
Oct 5	19.00	1982—Feb. 2	16.50	Apr.	17.15		
13	18.00			May	19.61		
				June	20.03		

## 1.34 TERMS OF LENDING AT COMMERCIAL BANKS Survey of Loans Made, November 2-7, 1981

Item	All sizes	Size of loan (in thousands of dollars)					500-999	1,000 and over
		1-24	25-49	50-99	100-499	500-999		
SHORT-TERM COMMERCIAL AND INDUSTRIAL LOANS								
1 Amount of loans (thousands of dollars)	\$25,466,901	\$653,739	\$639,132	\$579,473	\$2,158,438	\$814,291	\$20,421,829	
2 Number of loans	161,627	115,558	20,039	8,992	12,122	1,275	3,641	
3 Weighted-average maturity (months)	1.6	3.0	2.8	3.9	3.4	3.0	1.2	
4 Weighted-average interest rate (percent per annum)	17.23	19.95	19.19	19.65	19.13	18.64	16.73	
5 Interquartile range <sup>1</sup>	16.14-18.06	18.25-21.55	18.25-20.85	18.27-21.15	18.25-20.22	17.50-19.65	15.99-17.30	
Percentage of amount of loans								
6 With floating rate	35.5	27.9	48.2	56.5	57.0	72.1	31.1	
7 Made under commitment	48.1	31.3	35.9	35.8	45.9	71.9	48.8	
8 With no stated maturity	15.9	10.1	15.3	17.1	19.9	35.2	15.0	
LONG-TERM COMMERCIAL AND INDUSTRIAL LOANS								
9 Amount of loans (thousands of dollars)	\$2,438,209	\$317,491			\$688,950	\$205,534	\$1,226,234	
10 Number of loans	27,160	23,639			2,811	319	391	
11 Weighted-average maturity (months)	37.6	29.4			34.0	37.1	41.8	
12 Weighted-average interest rate (percent per annum)	18.94	19.60			21.22	18.52	17.55	
13 Interquartile range <sup>1</sup>	17.50-19.56	18.00-20.50			18.00-20.50	17.50-19.75	16.72-18.90	
Percentage of amount of loans								
14 With floating rate	56.3	48.0			33.1	85.6	66.6	
15 Made under commitment	54.1	36.3			27.2	69.5	71.2	
CONSTRUCTION AND LAND DEVELOPMENT LOANS								
16 Amount of loans (thousands of dollars)	\$1,420,394	\$155,847	\$192,683	\$187,702	\$425,106		\$459,056	
17 Number of loans	23,437	12,668	5,497	2,616	2,406		250	
18 Weighted-average maturity (months)	9.9	7.6	9.9	5.7	11.5		11.1	
19 Weighted-average interest rate (percent per annum)	19.46	19.86	19.60	20.43	20.03		18.34	
20 Interquartile range <sup>1</sup>	18.54-20.75	19.00-21.00	18.77-19.90	18.50-21.74	19.56-20.82		17.12-19.90	
Percentage of amount of loans								
21 With floating rate	55.3	17.6	21.2	45.2	48.5		92.8	
22 Secured by real estate	82.4	95.9	98.5	98.9	78.9		67.5	
23 Made under commitment	38.5	16.4	11.6	16.8	28.2		75.6	
24 With no stated maturity	10.2	3.6	2.3	4.3	4.3		23.7	
Type of construction								
25 1- to 4-family	45.8	79.6	55.2	63.4	57.3		12.6	
26 Multifamily	5.0	1.2	1.6	2.8	3.7		9.8	
27 Nonresidential	49.2	19.1	43.2	33.8	39.0		77.7	
LOANS TO FARMERS								
28 Amount of loans (thousands of dollars)	\$1,260,648	\$156,504	\$179,965	\$197,569	\$162,025	\$301,038	\$263,546	
29 Number of loans	64,345	41,247	12,442	5,909	2,448	1,919	360	
30 Weighted-average maturity (months)	5.8	5.8	7.3	5.5	5.7	5.6	4.9	
31 Weighted-average interest rate (percent per annum)	18.76	18.52	18.79	18.59	18.40	19.04	18.93	
32 Interquartile range <sup>1</sup>	17.72-19.56	17.72-19.44	17.72-19.54	17.72-19.36	17.72-19.06	18.10-20.12	18.00-20.15	
By purpose of loan								
33 Federally insured	18.50	18.56	18.19	18.35	18.41	18.14	19.10	
34 Other livestock	18.66	18.23	19.50	18.77	18.05	19.20	19.11	
35 Other current operating expenses	18.88	18.67	19.04	18.74	18.47	19.03	18.63	
36 Farm machinery and equipment	18.11	18.00	17.94	17.98	18.28			
37 Other	18.87	18.68	19.13	19.31				

1. Interest rate range that covers the middle 50 percent of the total dollar amount of loans made.

2. Fewer than 10 sample loans.

NOTE. For more detail, see the Board's E-2(111) statistical release.



## 1.33 PRIME RATE CHARGED BY BANKS on Short-Term Business Loans

Percent per annum

Effective date	Rate	Effective Date	Rate	Month	Average rate	Month	Average rate
1981—May 19.....	20.00	1981—Nov. 3.....	17.50	1980—Oct.....	13.79	1981—July.....	20.39
June 22.....	20.50	9.....	17.00	Nov.....	16.06	Aug.....	20.50
July 3.....	20.00	17.....	16.50-	Dec.....	20.35	Sept.....	20.06
July 8.....	20.50	20.....	17.00			Oct.....	18.45
Sept 15.....	20.00	24.....	16.50	1981—Jan.....	20.16	Nov.....	16.64
Oct 22.....	19.50	Dec. 1.....	16.00	Feb.....	19.43	Dec.....	15.75
Oct 5.....	19.00	Dec. 1.....	15.75	Mar.....	18.05		
Oct 13.....	18.00	1982—Feb. 2.....	16.50	Apr.....	17.15	1982—Jan.....	15.75
		Feb 18.....	17.00	May.....	19.61	Feb.....	16.56
		Feb 23.....	16.50	June.....	20.03		

## 1.34 TERMS OF LENDING AT COMMERCIAL BANKS Survey of Loans Made, November 2-7, 1981

Item	All sizes	Size of loan (in thousands of dollars)					
		1-24	25-49	50-99	100-499	500-999	1,000 and over
SHORT-TERM COMMERCIAL AND INDUSTRIAL LOANS							
1 Amount of loans (thousands of dollars)	\$25,406,901	\$853,739	\$639,132	\$579,473	\$2,126,436	\$814,291	\$20,421,829
2 Number of loans	171,627	115,558	20,039	8,992	12,122	1,275	3,641
3 Weighted-average maturity (months)	1.6	3.0	2.8	3.9	3.4	3.0	1.2
4 Weighted-average interest rate (percent per annum)	17.23	19.95	19.19	19.65	19.13	18.64	16.75
5 Interquartile range <sup>1</sup>	16.14-18.06	18.25-21.55	18.25-20.85	18.27-21.15	18.25-20.22	17.50-19.65	15.99-17.50
Percentage of amount of loans							
6 With floating rate	35.5	27.9	48.2	56.5	57.0	72.1	31.1
7 Made under commitment	48.1	31.3	35.9	35.8	45.9	71.9	48.8
8 With no stated maturity	15.9	10.1	15.3	17.1	19.9	35.2	15.0
LONG-TERM COMMERCIAL AND INDUSTRIAL LOANS							
9 Amount of loans (thousands of dollars)	\$2,438,209	\$317,491	\$317,491	\$688,950	\$205,534	\$205,534	\$1,226,234
10 Number of loans	27,160	23,639	23,639	2,811	319	319	391
11 Weighted-average maturity (months)	37.6	29.4	29.4	34.0	37.1	37.1	41.8
12 Weighted-average interest rate (percent per annum)	18.94	19.60	19.60	21.22	18.52	18.52	17.55
13 Interquartile range <sup>1</sup>	17.50-19.56	18.00-20.50	18.00-20.50	18.00-20.50	17.50-19.75	17.50-19.75	16.72-18.90
Percentage of amount of loans							
14 With floating rate	56.3	48.0	48.0	33.1	65.6	65.6	66.6
15 Made under commitment	54.1	36.3	36.3	27.2	69.5	69.5	71.1
CONSTRUCTION AND LAND DEVELOPMENT LOANS							
16 Amount of loans (thousands of dollars)	\$1,420,394	\$155,847	\$192,683	\$187,702	\$425,106	\$425,106	\$459,056
17 Number of loans	23,437	12,668	5,497	2,616	2,406	2,406	250
18 Weighted-average maturity (months)	9.9	7.6	9.9	5.7	11.5	11.1	11.1
19 Weighted-average interest rate (percent per annum)	19.46	19.86	19.60	20.43	20.03	18.34	18.34
20 Interquartile range <sup>1</sup>	18.54-20.75	19.00-21.00	18.77-19.90	18.50-21.74	19.56-20.82	17.12-19.90	17.12-19.90
Percentage of amount of loans							
21 With floating rate	55.3	17.6	21.2	45.2	48.5	42.8	42.8
22 Secured by real estate	82.4	95.9	98.5	94.9	78.9	67.5	67.5
23 Made under commitment	38.5	16.4	11.6	16.8	28.2	75.6	75.6
24 With no stated maturity	10.2	3.6	2.3	4.3	4.3	23.7	23.7
Type of construction							
25 1-to-4-family	45.8	79.6	55.2	61.4	57.3	12.6	12.6
26 Multifamily	5.0	1.2	1.6	2.8	3.7	9.8	9.8
27 Nonresidential	49.2	19.1	43.2	33.8	39.0	77.7	77.7
LOANS TO FARMERS							
28 Amount of loans (thousands of dollars)	\$1,260,648	\$156,504	\$179,965	\$197,569	\$162,025	\$301,038	\$263,549
29 Number of loans	64,345	41,247	12,442	5,949	2,448	1,919	388
30 Weighted-average maturity (months)	5.8	5.8	7.3	5.5	5.7	5.6	4.5
31 Weighted-average interest rate (percent per annum)	18.76	18.52	18.79	18.59	18.40	19.04	18.9
32 Interquartile range <sup>1</sup>	17.72-19.56	17.72-19.44	17.72-19.54	17.72-19.36	17.72-19.06	18.10-20.12	18.00-20.12
By purpose of loan							
33 Feeder livestock	18.50	18.56	18.19	18.35	18.41	18.14	19.11
34 Other livestock	18.66	18.23	19.50	18.77	18.05	(-)	(-)
35 Other current operating expenses	18.88	18.67	19.04	18.74	18.47	19.20	19.11
36 Farm machinery and equipment	18.11	18.00	17.94	17.98	(-)	(-)	(-)
37 Other	18.87	18.68	19.13	19.31	18.28	19.03	18.6

1. Interest rate range that covers the middle 50 percent of the total dollar amount

of loans made.

2. Fewer than 10 sample loans

NOTE For more detail, see the Board's L-2(111) statistical release.



## 1.33 PRIME RATE CHARGED BY BANKS on Short-Term Business Loans

Percent per annum

Effective date	Rate	Effective Date	Rate	Month	Average Rate	Month	Average Rate
1980—Sept 19 .....	12.50	1978—Dec 2 .....	18.50	1979—Sept .....	12.90	1980—May .....	16.57
26 .....	13.00	5 .....	19.00	Oct. ....	14.39	June .....	12.63
Oct 1 .....	13.50	10 .....	20.00	Nov. ....	15.55	July .....	11.48
17 .....	14.00	16 .....	21.00	Dec. ....	15.30	Aug. ....	11.12
29 .....	14.50	19 .....	21.50			Sept. ....	12.23
Nov. 6 .....	15.50			1980—Jan. ....	15.25	Oct. ....	13.79
17 .....	16.25	1981—Jan. 2 .....	20.50	Feb. ....	15.63	Nov. ....	16.06
21 .....	17.00			Mar. ....	18.31	Dec. ....	20.35
26 .....	17.75			Apr. ....	19.77		

## 1.34 TERMS OF LENDING AT COMMERCIAL BANKS Survey of Loans Made, November 3-8, 1980

Item	All sizes	Size of loan (in thousands of dollars)					
		1-24	25-49	50-99	100-199	500-999	1,000 and over
SHORT-TERM COMMERCIAL AND INDUSTRIAL LOANS							
1 Amount of loans (thousands of dollars)	13,102,722	729,247	549,089	562,369	1,519,646	665,483	6,774,868
2 Number of loans	131,579	92,779	16,539	9,235	10,024	1,049	1,953
3 Weighted-average maturity (months)	2.2	3.0	3.5	2.9	3.0	3.4	1.7
4 Weighted-average interest rate (percent per annum)	15.71	15.97	15.72	16.39	15.52	15.87	15.68
5 Interquartile range <sup>1</sup>	15.12-16.65	14.75-17.25	13.52-17.11	15.50-17.50	14.50-16.75	15.31-16.61	15.25-16.50
Percentage of amount of loans							
6 With floating rate	50.5	25.0	27.9	40.7	52.1	68.3	53.0
7 Made under commitment	45.7	25.1	22.3	35.3	46.4	65.6	48.0
8 With no stated maturity	25.2	14.9	12.0	17.4	24.3	31.0	27.1
LONG-TERM COMMERCIAL AND INDUSTRIAL LOANS							
9 Amount of loans (thousands of dollars)	3,152,110		306,233		571,615	171,411	2,102,851
10 Number of loans	17,949		15,060		2,245	245	439
11 Weighted-average maturity (months)	46.3		48.3		34.4	40.6	49.6
12 Weighted-average interest rate (percent per annum)	15.07		15.42		15.29	15.20	14.95
13 Interquartile range <sup>1</sup>	14.50-15.62		14.93-16.65		14.75-15.50	14.50-16.25	14.50-15.50
Percentage of amount of loans							
14 With floating rate	70.1		39.3		29.5	72.3	85.5
15 Made under commitment	58.1		29.0		25.1	70.2	70.3
CONSTRUCTION AND LAND DEVELOPMENT LOANS							
16 Amount of loans (thousands of dollars)	1,072,203	105,341	242,030	167,557	230,726		326,549
17 Number of loans	24,383	13,527	6,586	2,637	1,413		221
18 Weighted-average maturity (months)	13.4	9.4	5.0	19.4	10.0		18.0
19 Weighted-average interest rate (percent per annum)	15.31	15.23	14.64	14.74	15.24		16.16
20 Interquartile range <sup>1</sup>	14.00-16.65	14.04-16.99	13.10-15.50	14.00-14.75	14.00-17.00		15.50-17.00
Percentage of amount of loans							
21 With floating rate	44.4	22.7	8.8	45.6	47.9		74.7
22 Secured by real estate	81.9	84.3	98.2	96.7	89.8		56.0
23 Made under commitment	60.9	46.7	60.9	21.5	78.2		73.0
24 With no stated maturity	16.5	4.9	26.9	3.1	35.8		5.8
Type of construction							
25 1- to 4-family	40.9	75.0	66.9	57.7	24.9		13.3
26 Multifamily	8.2	2.5	23.1	5.6	8.9		10.7
27 Nonresidential	50.9	22.7	23.1	36.7	66.2		76.0
LOANS TO FARMERS							
28 Amount of loans (thousands of dollars)	1,301,641	191,079	217,452	190,952	196,075	275,324	230,795
29 Number of loans	72,123	46,721	14,605	5,840	2,838	1,789	376
30 Weighted-average maturity (months)	7.3	6.7	7.1	5.6	6.6	10.6	5.9
31 Weighted-average interest rate (percent per annum)	15.46	15.10	15.02	15.22	15.55	15.74	15.98
32 Interquartile range <sup>1</sup>	14.49-16.64	14.30-15.97	14.32-15.95	14.04-16.21	15.00-16.10	14.48-16.64	14.93-17.0
By purpose of loan							
33 Feeder livestock	15.45	15.10	15.09	14.93	15.25	15.79	16.3
34 Other livestock	15.35	15.19	15.06	14.84	15.46	15.30	15.2
35 Other current operating expenses	15.44	15.17	15.14	15.33	15.68	15.97	15.21
36 Farm machinery and equipment	15.13	15.01	14.81	15.44	15.42	(2)	(2)
37 Other	15.75	14.91	13.90	16.06	15.79	15.44	17.25

1. Interest rate range that covers the middle 50 percent of the total dollar amount of loans made.  
 2. Fewer than 10 sample loans.

NOTE. For more detail, see the Board's E-2(41a) statistical release.

## 1.1.33 PRIME RATE CHARGED BY BANKS on Short-Term Business Loans

Percent per annum

Effective date	Rate	Effective Date	Rate	Month	Average rate	Month	Average rate
1980—Dec. 10	20.00	1981—Mar. 17	17.50	1981—Jan.	19.77	1981—Jan.	20.16
16	21.00	Apr. 2	17.00	Feb.	16.57	Feb.	19.43
19	21.50	24	17.50	Mar.	12.63	Mar.	18.05
		30	18.00	June	11.48	Apr.	17.15
1981—Jan. 2	20.50	May 4	19.00	July	11.12	May	19.61
9	20.00	11	20.00	Aug.	12.23	June	20.03
Feb. 3	19.50	19	20.00	Sept.	13.79		
23	19.00	22	20.50	Oct.	16.06		
Mar. 10	18.00	June 3	20.00	Nov.	20.35		

## 1.1.34 TERMS OF LENDING AT COMMERCIAL BANKS Survey of Loans Made, May 4-9, 1981

Item	All sizes	Size of loan (in thousands of dollars)					
		1-24	25-49	50-99	100-499	500-999	1,000 and over
SHORT-TERM COMMERCIAL AND INDUSTRIAL LOANS							
1 Amount of loans (thousands of dollars)	16,840,794	853,190	481,971	767,519	2,118,788	1,041,775	11,577,551
2 Number of loans	164,452	121,015	14,694	12,003	12,686	1,706	2,346
3 Weighted-average maturity (months)	2.0	3.1	3.8	3.5	3.2	3.3	1.4
4 Weighted-average interest rate (percent per annum)	19.99	19.45	19.87	19.10	19.93	19.58	20.14
5 Interquartile range <sup>1</sup>	19.00-20.85	17.85-21.15	18.83-21.74	17.00-21.00	18.95-21.49	18.34-20.75	19.36-20.85
Percentage of amount of loans							
6 With floating rate	49.0	30.1	41.2	43.2	64.7	60.7	47.2
7 Made under commitment	52.8	24.6	33.1	48.1	49.1	56.7	56.4
8 With no stated maturity	21.6	13.4	12.6	21.4	20.7	29.5	22.0
LONG-TERM COMMERCIAL AND INDUSTRIAL LOANS							
9 Amount of loans (thousands of dollars)	3,633,958	280,677	17,936	450,944	2,726,645	175,691	2,726,645
10 Number of loans	21,441	17,936	35.4	277	2,725	277	503
11 Weighted-average maturity (months)	50.6	35.4	19.22	53.1	53.1	43.8	52.2
12 Weighted-average interest rate (percent per annum)	19.25	19.22	17.87-21.34	19.34	19.34	19.48	19.23
13 Interquartile range <sup>1</sup>	19.00-20.00	17.87-21.34	15.00-21.74	18.68-20.16	18.68-20.16	19.00-20.74	19.00-19.76
Percentage of amount of loans							
14 With floating rate	78.6	49.5	25.7	68.4	68.4	87.1	82.7
15 Made under commitment	77.2	25.7	12.6	34.6	34.6	78.0	89.5
CONSTRUCTION AND LAND DEVELOPMENT LOANS							
16 Amount of loans (thousands of dollars)	874,542	81,222	169,763	223,133	326,415	19,000-21.55	326,415
17 Number of loans	13,956	2,363	2,333	1,332	237	237	237
18 Weighted-average maturity (months)	13.2	4.1	17.7	12.0	16.1	16.1	16.1
19 Weighted-average interest rate (percent per annum)	19.09	19.06	16.10	20.74	19.35	19.35	19.35
20 Interquartile range <sup>1</sup>	18.00-21.94	15.00-21.74	8.25-18.40	20.40-22.54	19.00-21.55	19.00-21.55	19.00-21.55
Percentage of amount of loans							
21 With floating rate	66.3	42.3	19.4	83.2	87.0	87.0	87.0
22 Secured by real estate	93.1	85.5	97.9	92.4	93.0	93.0	93.0
23 Made under commitment	64.8	62.3	19.8	80.9	78.1	78.1	78.1
24 With no stated maturity	10.5	5.2	4.7	4.0	17.0	17.0	17.0
Type of construction							
25 1-to-4-family	32.3	85.5	12.5	24.0	27.7	27.7	27.7
26 Multifamily	13.1	3.3	3.0	10.1	25.2	25.2	25.2
27 Nonresidential	54.7	11.2	84.5	65.9	47.2	47.2	47.2
LOANS TO FARMERS							
28 Amount of loans (thousands of dollars)	1,419,090	168,183	236,302	220,646	180,935	281,187	311,838
29 Number of loans	77,593	50,065	15,850	6,450	2,740	1,957	531
30 Weighted-average maturity (months)	6.8	6.8	6.4	6.6	6.3	7.7	6.8
31 Weighted-average interest rate (percent per annum)	17.88	17.50	17.59	17.67	17.78	17.97	18.45
32 Interquartile range <sup>1</sup>	16.53-19.10	16.64-18.68	16.64-18.81	16.64-18.50	16.64-18.50	16.53-18.77	16.10-20.75
By purpose of loan							
33 Feeder livestock	18.44	17.98	18.43	17.91	18.07	18.49	18.93
34 Other livestock	17.98	17.28	18.42	17.39	18.75	17.64	(2)
35 Other current operating expenses	17.73	17.46	17.36	17.65	17.88	18.27	17.85
36 Farm machinery and equipment	17.61	17.53	17.62	17.63	17.01	(2)	(2)
37 Other	17.68	17.30	17.25	17.58	17.22	17.35	19.73

1. Interest rate range that covers the middle 50 percent of the total dollar amount of loans made.

2. Fewer than 10 sample loans.

NOTE. For more detail, see the Board's E-2(111) statistical release.

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## 3.34 PRIME RATE CHARGED BY BANKS on Short-Term Business Loans

Percent per annum

Effective date	Rate	Effective date	Rate	Month	Average rate	Month	Average rate
1979—June 19.....	11½	1979—Oct. 9.....	14½	1979—Jan.....	11.75	1979—July.....	11.54
July 27.....	11¾	23.....	15	Feb.....	11.75	Aug.....	11.91
Aug. 16.....	12	Nov. 1.....	15½	Mar.....	11.75	Sept.....	12.90
Sept. 28.....	12¼	9.....	15½	Apr.....	11.75	Oct.....	14.39
Oct. 7.....	12¼	16.....	15½	May.....	11.75	Nov.....	15.55
Nov. 14.....	13	30.....	15½	June.....	11.65	Dec.....	15.30
Dec. 21.....	13¼	7.....	15½				
28.....	13½						

## 3.35 TERMS OF LENDING AT COMMERCIAL BANKS Survey of Loans Made, November 5-10, 1979▲

Item	All sizes	Size of loan (in thousands of dollars)					1,000 and over
		1-24	25-49	50-99	100-499	500-999	
SHORT-TERM COMMERCIAL AND INDUSTRIAL LOANS							
1 Amount of loans (thousands of dollars).....	8,046,052	689,179	365,934	428,441	1,707,259	678,645	4,176,594
2 Number of loans.....	126,938	96,306	11,074	6,926	10,261	1,052	1,320
3 Weighted average maturity (months).....	3.0	3.6	3.3	3.3	3.5	3.9	2.5
4 Weighted average interest rate (percent per annum).....	15.81	14.77	14.92	15.93	15.41	16.02	16.19
5 Interquartile range <sup>1</sup> .....	15.25-16.82	13.23-16.87	14.58-17.48	13.65-16.91	15.25-16.86	15.31-16.76	15.31-16.76
Percentage of amount of loans							
6 With floating rate.....	52.6	17.1	21.7	44.6	36.5	66.6	66.3
7 Made under commitment.....	49.4	19.7	26.2	38.4	43.6	61.1	58.0
LONG-TERM COMMERCIAL AND INDUSTRIAL LOANS							
8 Amount of loans (thousands of dollars).....	1,636,882	322,465	322,465	144,341	203,211	136,801	974,405
9 Number of loans.....	28,486	27,023	27,023	2,256	1,015	266	24
10 Weighted average maturity (months).....	48.5	35.0	35.0	6.3	39.0	35.6	36.8
11 Weighted average interest rate (percent per annum).....	15.56	14.78	14.78	15.72	15.66	15.43	15.81
12 Interquartile range <sup>1</sup> .....	15.25-16.50	13.00-16.19	13.00-16.19	13.72-16.99	15.00-17.23	15.25-17.00	15.25-16.25
Percentage of amount of loans							
13 With floating rate.....	71.8	27.9	27.9	66.4	66.4	74.0	87.1
14 Made under commitment.....	63.3	33.3	33.3	60.3	60.3	62.0	74.1
CONSTRUCTION AND LAND DEVELOPMENT LOANS							
15 Amount of loans (thousands of dollars).....	1,050,513	204,258	194,619	144,341	274,856	232,439	232,439
16 Number of loans.....	34,460	25,154	5,311	2,256	1,562	177	177
17 Weighted average maturity (months).....	9.7	7.9	18.5	6.3	7.4	9.1	9.1
18 Weighted average interest rate (percent per annum).....	15.51	14.21	15.73	15.72	15.83	15.97	15.97
19 Interquartile range <sup>1</sup> .....	14.49-17.25	11.85-16.31	14.58-17.21	13.72-16.99	14.58-17.61	15.69-17.50	15.69-17.50
Percentage of amount of loans							
20 With floating rate.....	40.2	16.2	12.8	29.6	58.1	69.8	69.8
21 Secured by real estate.....	77.0	70.4	66.1	61.4	91.0	85.2	85.2
22 Made under commitment.....	40.5	31.4	26.5	31.3	53.0	51.1	51.1
Type of construction							
23 1- to 4-family.....	38.8	58.6	49.6	20.5	44.2	17.3	17.3
24 Multifamily.....	7.4	1.3	1.5	4.8	10.8	15.1	15.1
25 Nonresidential.....	53.8	40.1	48.8	74.8	44.9	67.5	67.5
LOANS TO FARMERS							
26 Amount of loans (thousands of dollars).....	1,192,740	160,093	184,178	181,278	234,279	247,826	185,086
27 Number of loans.....	65,857	42,436	12,814	4,926	3,604	1,670	404
28 Weighted average maturity (months).....	6.9	7.3	7.1	7.0	7.3	5.8	7.3
29 Weighted average interest rate (percent per annum).....	13.63	12.91	13.20	13.32	13.11	13.86	15.33
30 Interquartile range <sup>1</sup> .....	12.42-14.49	11.83-13.80	11.72-14.32	12.00-14.41	12.00-14.00	13.42-13.80	13.42-17.53
By purpose of loan							
31 Feeder livestock.....	13.51	12.03	13.20	12.87	13.44	13.45	14.63
32 Other livestock.....	12.91	12.16	12.55	14.19	11.57	(2)	(2)
33 Other current operating expenses.....	13.65	13.09	13.28	13.81	12.96	15.45	15.20
34 Farm machinery and equipment.....	13.16	13.03	13.75	13.53	12.09	(2)	(2)
35 Other.....	14.53	13.38	12.92	13.30	14.15	14.21	16.76

1. Interest rate range that covers the middle 50 percent of the total dollar amount of loans made.

2. Fewer than 10 sample loans.

NOTE. For more detail, see the Board's F.2(416) statistical release.  
▲ These data are preliminary; final figures will appear in the February BULLETIN.

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FPC OPINION NUMBER	NO. OF PROPERTIES UNDER EACH OPINION, BY STATE	PERCENT OF TOTAL PROPERTIES BY STATE
586	Ka. - 45 Ok. - 378 Tx. - 65 <u>Total 488</u>	Ka. - 9.2% Ok. - 77.5% Tx. - 13.3%
699/699H	Ka. - 14 Ok. - 161 Tx. - 293 La. - 153 Ms. - 23 N.H. - 26 <u>Total 670</u>	Ka. - 2.1% Ok. - 24 % Tx. - 43.7% La. - 22.8% Ms. - 3.4% N.H. - 3.9%
749	Ka. - 43 Ok. - 422 Tx. - 554 La. - 159 Ms. - 19 N.H. - 36 <u>Total 1,233</u>	Ka. - 3.5% Ok. - 34.2% Tx. - 44.9% La. - 12.9% Ms. - 1.5% N.H. - 2.9%
770/770A	Ts. - 2 Ok. - 218 Tx. - 278 La. - 163 Ms. - 6 N.H. - 23 <u>Total 690</u>	Ka. - .3% Ok. - 31.6% Tx. - 40.3% La. - 23.6% Ms. - .9% N.H. - 3.3%



IN THE  
DISTRICT COURT OF BARBER COUNTY, KANSAS  
DEFENDANT'S EXHIBIT A, TRIAL,  
OCTOBER 13, 1983

SCHEDULE OF SUSPENSE PAYMENTS

NO. OF KS. RESIDENTS RECEIVING SUSPENSE PAYMENTS	TOTAL OF ALL SUSPENSE PAYMENTS IN ALL STATES	SUSPENSE PAYMENTS TO KS. RESIDENTS	% OF TOTAL SUSPENSE \$ PAID TO KS. RESIDENTS	GAS PURCHASES OF SUN OIL COMPANY, (DELAWARE), BY STATE
7 1,981 interest holders re- ceived payment nationwide; seven-tenths of one percent were thus Kansas residents.)	\$470,223.05 (Only \$13,000 since 1973)  \$1,167,000	\$763.48	Six Hundredths of one per cent	Ks. - .281% Ok. - 13.671% Tx. - 46.255% La. - 28.008% Ms. - 1.560% N.H. - 6.270% Others - 4.062%
0	\$0	\$0		
14 1,353 interest holders received payment nation- wide, one percent were thus Kansas residents.)	\$2,676,000	\$12,932.13	Less than five tenths of one percent	

(Filed December 13, 1983)

IN THE  
DISTRICT COURT OF BARBER COUNTY, KANSAS

RICHARD WORTMAN and HAZEL )	
MOORE, Individually and as rep- )	
resentatives of all producers and )	
royalty owners to whom Sun Oil )	
Company has made or should make )	
payment of suspended proceeds or )	
royalties pursuant to FPC Opinions )	Case No. 79C40
or FERC, )	
Plaintiffs, )	
-vs- )	
SUN OIL COMPANY, a Delaware )	
Corporation, )	
Defendant. )	

**MEMORANDUM DECISION**

Judgement for the plaintiff is hereby rendered in accordance with the following findings of fact and conclusions of law on this 12 day of December, 1983.

**FINDINGS OF FACT**

The plaintiffs in this action are Richard Wortman, who is a gas royalty owner under a Kansas oil and gas lease to whom Sun accounts for his gas royalties, and Hazel Moore, who is a gas royalty owner under an Oklahoma oil and gas lease to whom Sun accounts for her gas royalties. Both appear individually and as representatives of a class of persons defined as follows:

"All royalty owners and overriding royalty owners to whom Sun Oil Company (Sun) made payment of

suspended royalties after August 23, 1974, through 1979, pursuant to Federal Power Commission Opinion Nos. 586, 699, 699H, 770 and 770A."

Plaintiffs will hereinafter, either individually or as representatives of a class, be referred to as "Wortman". The defendant is Sun Oil Company, hereinafter referred to as "Sun".

This class action against Sun seeks to recover interest on additional or suspense gas royalties paid by Sun at various times from and after August 23, 1974, relating to the above mentioned FPC and FERC Opinions, to its royalty owners and overriding royalty owners subsequent to approval by FPC and FERC and the courts of certain proposed rate increases on gas sales in the six states of the United States, where Sun is engaged in producing natural gas.

Both Wortman and Moore have received royalties previously suspended pursuant to one or more of the above mentioned FPC or FERC Opinions.

Sun did not pay any interest on the suspended royalties which were eventually paid to the plaintiffs and the plaintiff class pursuant to the above mentioned FPC and FERC Opinions.

Opinion No. 586 involves only the Hugoton-Anadarko area as defined by FPC and which consists of all of the State of Kansas and parts of the States of Oklahoma and Texas.

Beginning with Opinion 699, the FERC eliminated the area by area pricing scheme it had been employing and established a nation-wide rate for qualified gas. Additionally, Opinions 699, 699H, 700 and 700A set certain

rates governing the sale of natural gas in interstate commerce. During the pendency of subsequent administrative and court appeals involving these opinions, Sun began receiving money at the increased rates set forth in these opinions but did not pay the increase out to its royalty owners.

Through the use of notice slips accompanying regular royalty checks, Sun informed the royalty owners that until final approval of the various opinions, payment of the increased proceeds would be suspended. Copies of such notices are attached, marked Exhibit 1-3.

Under Opinion 586, there were 4,727 interests paid \$470,223.05; but it is believed that only about \$13,000.00 has been paid since 1973, this money having been accumulated from November, 1968, through November, 1970, but not paid out to royalty owners until on or about August 28, 1978.

Under Opinion 699 and 699H, 981 interest holders nation-wide received \$1,167,000.00 in suspense royalties in July, 1976, same having been accumulated from July, 1974, through April, 1976.

Under Opinions 770 and 700A there were about 1,353 interest holders, nation-wide, who received suspended royalties of about \$2,676,000.00, same having been accumulated from July of 1976 through January of 1978, and paid out principally in April, 1978.

Sun has admitted that no interest was paid on proceeds held in suspense that were ultimately paid to the royalty owners.

The court has ordered that plaintiff Wortman and Moore are members of a class of approximately 2,300

members (actually, 3,159 notices were mailed by plaintiffs) of royalty owners and overriding royalty owners who received suspense royalties from Sun as a result of Opinion Nos. 586, 699, 699H, 770 and 700A pertaining to gas rates. First class mail notices have been mailed to all of such royalty owners in accordance with pressure sensitive mailing labels furnished for each member of the class by Sun. Plaintiffs have caused the notices to be mailed and have borne the expense thereof. As a result of the notice, 105 members of the class have been specifically excluded and 50 addresses did not receive the notice, leaving total notices received of 3,003, who are class members in this case.

Testimony at time of trial included the deposition of George Wehrmaker, controller for Sun, who testified in part as follows:

"Q. As Sun Gas received monies, FPC suspense monies, pursuant to Opinion 699, FPC Opinion 699, and pursuant to FPC Opinion 770, and any other applicable opinion where they were suspended, how were those monies handled? Were they handled like any other corporate money, put in the corporate treasury?

A. I believe so, yes. . . So far as I know, that would be the way it would be treated.

Q. The matter of suspense refers only to an accounting system, is that correct?

A. Yes.

Q. In other words, the money is not separated out and deposited in a separate bank account?

A. That's correct.

Q. Or separate investments of any kind?

A. That's correct.

Q. The money from FPC suspense gas was used then by Sun Gas Company just as any other case or money?

A. I believe so, yes.

Q. Used to make a profit?

A. I hope so, yes."

Meanwhile, Sun made substantial profits, after taxes and interest expense, the amount for the United States being \$367,000,000.00 in 1979.

Sun handled the suspense royalties for all royalty owners nation-wide in the same manner and they were paid out at the same time and in the same manner.

Sun furnished to the Federal Power Commission an agreement and undertaking to comply with the provisions of Subsection (c) of §154.102 of the Commission's regulations under the Natural Gas Act, copy which was an exhibit at time of trial and is attached hereto.

Copy of 18 CFR 154.67 and Federal Reserve Bulletins on prime rate charged by banks were made a part of the exhibits at time of trial. These exhibits show that if the rates were not approved, Sun would owe the purchasers interest at 7% per annum until October 10, 1974, at 9% per annum thereafter until September 30, 1979, and that the average prime rate, compounded quarterly, charged by banks according to Federal Reserve Bulletins until date of judgement.

As to all gas royalty owners and overriding royalty owners to whom Sun was accounting, Sun collected all



proceeds from the proposed increased rates including that fraction or percentage increase which belonged either to royalty owners or to purchasers and could in no event belong to Sun. The money belonging to others was deposited to cash in Sun's general account and comingled with its other funds during the suspension periods.

The applicable rates of interest which Phillips would have been required to pay pursuant to the corporate undertaking are established by 18 CFR, §154.67, as follows:

Until October 10, 1974, 7%

October 10, 1974, to September 30, 1979, 9%

October to December, 1979 (June, July, August average) 11.70%

January to March, 1980 (December, January, February) 14.28%

April to June, 1980 (March, April, May) 15.39%

July to September, 1980 (June, July, August) 18.22%

October to December, 1980 (September, October, November) 11.74%

January to March, 1981 (December, January, February) 14.03%

April to June, 1981 (March, April, May) 19.98%

July to September, 1981 (June, July, August) 18.27%

October to December, 1981 (September, October, November) 20.31%

January to March, 1982 (December, January, February) 18.46%

Further rates as determined by Federal Reserve Bulletins

The dates and the amounts of suspense royalties collected by Sun and the dates and amounts of payments of this money by Sun are contained in the records of defendant Sun and are readily ascertainable through the use of their computer.

## CONCLUSIONS OF LAW

As a legal proposition, this case is identical to *Shutts v. Phillips Petroleum*, 222 Kan. 527, 567 P.2d 1392 (1977), cert. denied 435 U. S. 961. The only factual distinction is the FPC began making its rate nationally rather than regionally, beginning with Opinion No. 699. Insofar as royalty owners are concerned, the size and scope of the class was naturally determined by the size and scope of the FPC rate structure. Royalties under Opinion Nos. 699 and 770 were suspended, used by Sun and paid out in the same manner and at the same time to all of Sun's royalty owners involved in the six states where Sun produces natural gas.

Sun does business in Kansas and was served with process in Kansas. No question is asserted as to the jurisdiction of the court over Sun. However, Sun contends the Kansas District Court lacks personal jurisdiction over nonresident members of the plaintiff class and, therefore, the court cannot adjudicate the respective rights to interest against Sun without violating their rights to due process. However, as a general rule, "one may not claim standing . . . to vindicate the constitutional rights of some third party." *Singleton v. Wulff*, 428 U. S. 106, 114 (1976), quoting *Barrows v. Jackson*, 346 U. S. 249, 255 (1935). The purpose behind this rule is twofold:

"First, the courts should not adjudicate such rights unnecessarily, and it may be that in fact the holders

of those rights either do not wish to assert them or will be able to enjoy them regardless of whether the court litigant is successful or not. . . . Second, third parties themselves usually will be the best proponents of their own rights." (*Singleton v. Wulff*, 428 U. S. at 113-114.)

This rule is particularly compelling where Sun's position is directly adversary to the class members, the class members were given first class mail notice, and elected to stay in the action. No class member has contested the requested judgement against Sun. By attempting to eliminate non-resident members of the class, Sun is attempting to eliminate most of its liability. It is not really interested in the rights of nonresident plaintiff class members except to eliminate such liability. The members who have stayed in the class have stayed in after due notice and because they want to collect the interest which is due them. They are represented by the named plaintiffs and by attorneys for the plaintiff class, not by Sun.

Nonresident plaintiffs have chosen Kansas as the forum by electing to stay in the case rather than to exclude themselves. The U. S. Supreme Court has ruled many times on the question of whether a judgement in a plaintiff class action is binding upon class members who are not residents of the forum state. (See *Hansberry v. Lee*, 311 U. S. 32 (1940); *Sovereign Camp of the Woodmen of the World v. Bolin*, 305 U. S. 66 (1938); *Supreme Council of Royal Arcanum v. Green*, 237 U. S. 531 (1915); *Supreme Tribe of Ben Hur v. Cauble*, 255 U. S. 356 (1921); *Hartford Life Insurance Co. v. Barber*, 245 U. S. 146 (1917); *Hartford Life Insurance Co. v. Ibs*, 237 U. S. 662 (1915). Each of these decisions arose within the firm factual framework, i.e., a class member seeking to enforce or attack

a judgement in the court of a sister state, and in each case the due process issues were raised by a party whose rights had been adjudicated in his absence. However, it was held that such party was bound as a class member.

Sun argues that only Wortman and a few other members of the class are Kansas residents and so the class consisting of all of Sun's royalty owners in six states should not have been certified. The argument is not new. The same argument was made in *Shutts, supra*, and was answered in that opinion, Pages 541 to 558 as follows:

1. The "minimum contacts" test applies to nonresident *defendants*, not plaintiffs. (P. 541-542.)
2. The element necessary to the exercise of jurisdiction over nonresident plaintiff class members is *due process*. (P. 543.)
3. In suits of a representative character, if a class is adequately represented, its interests are protected. (543-544.)
4. "If state courts cannot maintain class action suits with nonresident plaintiffs, can the 'small man' find legal redress in our modern society. . . ?" (P. 545.)
5. "The appellant argues this action should be brought in several different state courts. This risks inconsistent adjudications for a class which otherwise is treated alike." (P. 545.)
6. "There are questions of law and fact common to the plaintiff class" (residents and nonresidents). (P. 546.)
7. "After reviewing K.S.A. 60-223, we hold Kansas courts can exercise jurisdiction over nonresident plain-

tiffs in a class action of procedural due process guarantees are met." (P. 547.)

8. "... a class action may be binding on nonresident plaintiffs when a 'common fund' is involved and where due process requirements are met." (P. 552.)

9. "Here the notice given fully comports with Federal Rule No. 23, K.S.A. 60-223 and any possible constitutional requirements." (P. 554-444.)

10. "... adequate representation has been accorded the plaintiff class members by their representative through his attorneys who have done a superior job. . ." (P. 556-557.)

11. The class is more manageable with nonresidents of Kansas included because all royalty owners were treated alike, regardless of residency, particular lease provisions or royalty agreements. (P. 556.)

12. All of the royalty owners have a common interest in the money collected as suspense royalties. (P. 557-558.)

13. It was the same FPC regulation that caused the suspense royalties to be collected. (P. 558.)

14. Suspense royalties were paid out pursuant to the same FPC Opinion. (P. 558.)

15. All of the gas royalty owners have an interest in common with each other, in the equivalent of a "common fund" to a claim damages payable as interest, and they have a contact with Kansas by reason of such common interest. (P. 558.)

All of the following cases, involve identical legal issues and factual situations, to the *Shutts* case, *supra*, and they

all hold that it was proper to include nonresident plaintiff class members:

a. *Shutts v. Phillips Petroleum Co.*, 222 Kan. 527, 567 P.2d 1292, cert. denied 434 U. S. 1068.

b. *Gray v. Amoco Production Co.*, 1 Kan. App. 2d 338, 564 P.2d 579; 223 Kan. 441, 573 P.2d 1080.

c. *Maddox v. Gulf Oil Corp.*, 222 Kan. 733, 567 P.2d 1326, cert. denied 98 S. Ct. 1242.

d. *Sterling v. Marathon Oil Co.*, 223 Kan. 686, 576 P.2d 634.

e. *Sterling v. Superior Oil Co.*, 222 Kan. 737, 567 P.2d 1325, cert. denied 98 S. Ct. 1246.

f. *Nix v. Northern Natural Gas Producing Co. and Mobil*, 222 Kan. 739, 567 P.2d 1332, cert. denied 98 S. Ct. 1246.

g. *Helmley v. Ashland Co., Inc.*, 1 Kan. App. 2d 532, 571 P.2d 345.

The holdings of the Kansas court are consistent with U.S. Supreme Court decisions, federal court decisions and decisions of other states.

Accordingly, both because there is no present deprivation of any right of a class member and also because Sun lacks standing to argue the due process rights of its adversaries, this court declines to review the constitutional question presented.

Nonresident plaintiff class members have submitted themselves to the jurisdiction of the Kansas court. The Kansas statute, K.S.A. 60-223, is copied after the federal rule, F.R. Civ. P. 23. Provisions in both the federal



rule and the Kansas statute are practically the same pertaining to members electing to exclude themselves after proper notice. To bind absent class members, the due process protections of notice and representation must be afforded. (*Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950).) Adequate notice has been provided in this case and Sun challenges neither the method of notice (by first class mail) nor the form or quality of representation.

It is without question in Kansas that producers owe interest to their royalty owners on FPC suspense royalties held and used by the producers. (*Shutts v. Phillips Petroleum Co.*, 222 Kan. 527, 567 P.2d 1292, cert. denied 98 S. Ct. 1246; *Gray v. Amoco Production Co.*, 1 Kan. App. 2d 338, 564 P.2d 579; 223 Kan. 441, 573 P.2d 1080; *Maddox v. Gulf Oil Corp.*, 222 Kan. 733, 567 P.2d 1326, cert. denied 98 S. Ct. 1242; *Sterling v. Marathon Oil Co.*, 223 Kan. 686, 576 P.2d 634; *Sterling v. Superior Oil Co.*, 222 Kan. 737, 567 P.2d 1325, cert. denied 98 S. Ct. 1246; *Nix v. Northern Natural Gas Producing Co.*, 222 Kan. 739, 567 P.2d 1332, cert. denied 98 S. Ct. 1246; and *Helmley v. Ashland Oil Co., Inc.*, 1 Kan. App. 2d 532, 571 P.2d 345.)

Sun is liable for interest on all royalty and overriding royalty retained by it during the period that royalty was collected and suspended by Sun pending approval by the FPC (FERC) and the courts of certain rate increases under Opinion No. 586 as to suspended royalties paid in 1978 and under Opinion No. 699 and 770, with the exception of those who excluded themselves and those whom the first class mail notice did not reach.

The applicable rate of interest for which Sun is liable is seven percent (7%) per annum until October 10, 1974,

nine percent (9%) per annum thereafter until September 30, 1979, and thereafter at the average prime rate, compounded quarterly, as provided by 18 CFR 154.67.

The period of time for which interest is due shall be calculated from the date or dates said suspense royalty was received by Sun to the date or dates said suspense royalty was paid. Following the respective payouts, the remaining interest (principal according to the U. S. Rule) shall bear interest according to 18 CFR 154.67.

Sun has or can compile through its data base and computer program all of the necessary information with which to calculate the amount of interest due and owing.

All findings and orders set forth in the Journal Entry certifying the class are incorporated herein.

Excluded from this judgement are those parties who have filed herein their exclusion and those parties who did not receive notice.

Interest statutes in other states are not applicable here. (*Shutts, supra*, Pages 563-566.)

"In the instant case Phillips was obligated by FPC order to pay gas purchasers seven percent (7%) until September 13, 1970, and thereafter eight percent (8%) interest on the gas purchaser's share of the suspense monies. Here equitable principles require, and contractual principles dictate, that the royalty owners receive the same treatment as to their share." (*Shutts, supra*, page 563.)

"Phillips cites the interest laws of Kansas, Texas and Oklahoma. K.S.A. 16-201 provides. . . Texas Rev. Civ. Stat., Art 5069-1.03 (1971) states. . . Oklahoma stat., title 15, §266 (1966) states . . . all these



statutes refer to situations where there is no agreement as to the rate of interest. Here that situation does not exist." (*Shutts, supra*, Pages 563-564.)

"We are dealing with 'suspense royalties' which never could or would belong to Phillips. This was the equivalent of a common fund which was accumulated and used by Phillips. . . If the FPC had denied all of Phillips' rate increase applications, Phillips would have had to pay seven percent (7%), and later eight percent (8%), interest to the gas purchasers pursuant to its express agreement and corporate undertaking with the FPC. Thus, Phillips has made an express agreement, with regard to the monies accumulated in the suspense fund by Phillips to pay seven percent and later eight percent interest, as ultimately determined by the FPC Opinion No. No. 586."

". . . the FPC did require Phillips to agree to pay interest on the suspense monies they held, *which agreement the members of the plaintiff class herein assert as an appropriate measure of damages, expressed in terms of interest, for the commingling and use of the monies by Phillips.*" (*Shutts, supra*, Pages 564-565. Emphasis supplied.)

Thus, it is the Kansas law that neither the statutory interest rates of Kansas nor the statutory interest rates of other states where there are nonresident lessors, apply. Rather, the rates of interest as determined by FFRC apply as a measure of damages.

Sun may not enrich itself in the absence of any contractual sanction or seize upon the procedural complexities of the FPC to avoid responsibility for an appropriate measure of damages, expressed in terms of interest.

Judgement shall be entered herein as of December 12th, 1983, for plaintiff class in accordance with the foregoing conclusions. Since judgement is for damages for unjust enrichment, expressed in terms of interest, the statutory judgement rate of 15% (K.S.A. 16-204) should apply.

Plaintiff is requested to draw the appropriate Journal Entry to conform to the foregoing findings of fact and conclusions of law.

/s/ Clarence E. Renner  
Clarence E. Renner  
District Judge

Original - file

Copy: Mr. Luke Chapin  
Mr. Gerald Sawatzky

(District Court Certification Omitted in Printing)

#### EXHIBITS 1-3

Copies of notices attached here were printed earlier in this Joint Appendix, see pages 64-68.

#### EXHIBIT 4

Copy of agreement is printed in this Joint Appendix, see pages 79-80.

#### ATTACHMENTS

Copy of 18 CFR 154.67 and Federal Reserve Bulletin is printed in this Joint Appendix, see pages 81-92.

RICHARD WORTMAN and HAZEL )  
MOORE, Individually and as representa- )  
tives of all producers and royalty owners )  
to whom Sun Oil Company has made or )  
should make payment of suspended pro- )  
ceeds or royalties pursuant to FPC Opin- ) No. 79C40  
ions or FERC, )  
Plaintiffs, )  
vs. )  
SUN OIL COMPANY, a Delaware )  
Corporation, )  
Defendant. )

ON the 13th day of October, 1983, at ten o'clock a.m., this case comes regularly on for hearing and trial. Plaintiffs appear by and through W. Luke Chapin of Chapin & Penny, Attorneys, Medicine Lodge, Kansas 67104; and Ed Moore, Ginder & Moore, 202 South Grand, Cherokee, Oklahoma 73728. Defendant Sun Oil Company appears by and through William C. Phelps, Sun Exploration & Production Company, IV North Park, P. O. Box 2880, Dallas, Texas 75221; and Gerald Sawatzky, Foulston, Siefkin, Powers & Eberhardt, 700 Fourth Financial Center, Wichita, Kansas 67202.

THEREUPON, parties announce to the court that they are ready for trial; the evidence is introduced; and the court takes the matter under advisement, asking for written suggested findings of fact and conclusions of law from the parties within thirty days.

The court finds, generally, in favor of plaintiff class and in accordance with their requested findings of fact and conclusions of law.

IT IS THEREFORE BY THE COURT CONSIDERED,  
ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1) All findings and orders set forth in the Journal Entry certifying the class are incorporated herein.

2) The findings, conclusions and orders set forth in the court's Memorandum Opinion and Decision of December 12, 1983, are incorporated herein and made a part hereof.

3) Plaintiff class is granted judgment against Sun for interest on all royalty and overriding royalty retained by it during the period that royalties were collected and suspended by Sun pending approval by the FPC (FERC) and the courts of certain rate increases under Opinion No. 586, as to suspended royalties paid in 1978; and under Opinion Nos. 699 and 770, with the exception of those who excluded themselves and those whom the first class mail notice did not reach.

4) Sun Oil Company is instructed to compile necessary information and to calculate the amount of interest due and owing plaintiff class and each member thereof, according to findings and conclusions of the court.

5) Applicable rate of interest to be used by Sun in calculating amount due each royalty owner is 7% per

annum until October 10, 1974, 9% per annum thereafter until September 30, 1979, and thereafter at the average prime rate, compounded quarterly, as provided by 18 CFR 154.67.

6) Judgment is entered herein as of December 12, 1983, and since judgment is for damages for unjust enrichment, expressed in terms of interest, the statutory judgment rate of 15% (K.S.A. 16-204) shall apply following date of judgment.

7) Sun shall inform attorneys for plaintiff class when interest calculations have been completed and as to the total amount of the same; and the court shall then set the matter for further hearing as to attorneys' fees for attorneys for plaintiff class.

/s/ Clarence E. Renner  
Clarence E. Renner  
District Judge

(Counsel's Approval Omitted in Printing)

(Dated October 26, 1984)

IN THE  
SUPREME COURT OF THE STATE OF KANSAS

No. 56,494

RICHARD WORTMAN and HAZEL MOORE,  
*Appellees,*

v.

SUN OIL COMPANY,  
*Appellant.*

**SYLLABUS BY THE COURT**

1.

The issues raised concerning commonality, due process, and improper interest are identical to, and thereby controlled by *Shutts v. Phillips Petroleum Co.*, 235 Kan. 195, 679 P.2d 1159, cert. granted ..... U.S. .... (October 9, 1984).

2.

An issue may be considered on appeal even though not considered by the trial court of it involves only a legal question arising from proven or admitted facts finally determinative of the case or if consideration is necessary to serve the ends of justice or to prevent a denial of a fundamental right. *State v. Puckett*, 230 Kan. 596, 640 P.2d 1198 (1982).

3.

A mutual, open, running account is an account kept in writing of a connected series of debit and credit entries of reciprocal charges and allowances which the parties intend not to be considered independently but as a continuation of a related series. The statute of limitations,



therefore, does not run against each item separately, but only against the balance due.

4.

The "United States Rule" is applicable to interest on suspense royalties. It provides that in applying partial payments to an interest-bearing debt, which is due, in the absence of an agreement or statute to the contrary, the payment shall be first applied to the interest due, then to principal.

5.

Post-judgment interest is proper on an unpaid judgment, when the sum owed is certain or can be easily ascertained by calculation at the time of judgment.

Appeal from Barber district court; CLARENCE E. RENNER judge. Opinion filed October 26, 1984. Affirmed and remanded.

*Jim H. Goering*, of Foulston, Siefkin, Powers & Eberhardt, of Wichita, argued the cause, and *Gerald Sawatzky*, of the same firm, and *William C. Phelps*, of Sun Exploration and Production Company, of Dallas, Texas, were with him on the briefs for the appellant.

*W. Luke Chapin*, of Chapin & Penny, of Medicine Lodge, argued the cause, and *Ed Moore*, of Ginder & Moore, of Cherokee, Oklahoma, was with him on the brief for the appellees.

The opinion of the court was delivered by

HERD, J.: This is a class action to recover prejudgment interest on suspended gas royalties held and used by Sun Oil Company for several years. Sun appeals from the district court judgment in favor of the class.

Appellees are owners of mineral leaseholds located in Texas, Oklahoma, Louisiana, Mississippi, New Mexico and Kansas. Appellant is the lessor which produces natural gas from each appellee's leasehold. The royalty owners seek prejudgment interest on certain gas price increases received by Sun but held in suspension for a period of time.

On several occasions during the 1960's and 1970's, the Federal Power Commission (FPC) allowed Sun to charge its purchasers increased rates for the natural gas produced from appellees' leaseholds. During the pendency of the administrative proceedings and appeals involving these price increases, Sun began receiving money at the increased rates, but did not pay the increase to its royalty owners. In order to qualify for the price increases, the FPC required Sun to enter into an undertaking which required it to refund to its purchasers any price increases which were not ultimately approved. Sun then informed its royalty owners payment of the increased price would be suspended until final approval of the increases.

The principal price increases which were the basis for the current action are set out in FPC Opinions 699, 699H, 770 and 770A. Opinion No. 586, rendered in 1968, had been decided pursuant to the FPC's "area rate approach" and involved only the Hugoton-Anadarko area which consists of all of Kansas and parts of Oklahoma and Texas. In 1974, the FPC abandoned the area rate approach in Opinion No. 699. Opinions 699, 699H, 770 and 770A set "national rates." It was during the administrative and court appeals concerning these FPC increases that Sun began to receive the increased rates on which the royalty owners now claim interest.



The price increases allowed by Opinions 699 and 699H were collected by Sun from July, 1974, through April, 1976. A total of 670 properties were involved: 43.7% from Texas, 24% from Oklahoma, 22.8% from Louisiana, 3.9% from New Mexico, 3.4% from Mississippi, and 2.1% from Kansas. Nine hundred eight-one interest holders were affected. The total suspended royalty under these opinions was \$1,167,000. This amount was paid to the royalty owners in July, 1976.

The price increases allowed by opinions 770 and 770A were collected by Sun between December, 1976 and April, 1978. A total of 690 properties were involved: 40.3% from Texas, 31.6% from Oklahoma, 23.6% from Louisiana, 3.3% from New Mexico, 0.9% from Mississippi, and 0.3% from Kansas. One thousand three hundred fifty-three interest holders were affected. The total suspended royalty under these opinions was \$2,676,000. This amount was paid to the royalty owners in April, 1978.

The royalty owners' lawsuit was filed as a class action on August 30, 1979. Notice of the lawsuit was sent by first-class mail to each royalty owner. Three thousand one hundred fifty-nine notices were mailed out. One hundred five of the class members opted out.

The trial court held prejudgment interest was due from Sun to the royalty owners on the suspended gas royalties. Post-judgment interest was also awarded. Sun Oil Company appeals.

Appellant first argues Kansas law is violated by including in the plaintiff class nonresident members who do not own Kansas leases. Sun claims such a class action fails to meet the commonality prerequisite stated in *Shutts, Executor v. Phillips Petroleum Co.*, 222 Kan. 527,

557, 567 P.2d 1292 (1977), *cert. denied* 434 U.S. 1068 (1978) (*Shutts I*): "When liability is to be determined according to varying and inconsistent state laws, the common question of law or fact prerequisite of K.S.A. 60-223 (a)(2) will not be fulfilled." *Shutts I*, in which the commonality requirement was fulfilled, pertained to three states and this case pertains to six states. The six states obviously present more variation in laws than the three; however, this case presents the same issues as those in *Shutts I*.

There are substantial facts supporting commonality in this suit which is brought for interest on suspended royalties. The difference between the two cases is merely the degree of Kansas ownership to the total. All members of the plaintiff class are royalty owners of Sun. Their royalties were suspended at the same time. Sun accumulated and used the suspended royalties of all the owners. Sun notified all royalty owners of suspension at the same time. Sun paid all the owners the suspended royalties at the same time. The FPC opinions regulated the rates of all the royalty owners. Sun kept its records and treated all royalty owners the same, regardless of residency.

Sun next argues the due process clause of the Fourteenth Amendment prohibits Kansas from asserting jurisdiction over nonresident class members who do not have "minimum contacts" with Kansas. The basis of its argument is that the United States Constitution requires the existence of a substantial relationship between a state and any individual over which the state court seeks to assert jurisdiction. *Pennoyer v. Neff*, 95 U.S. 714, 24 L.Ed. 565 (1878). Sun further argues that since *Pennoyer*, the United States Supreme Court has insisted the state asserting jurisdiction

have "minimum contacts" with the party, plaintiff or defendant. See *Internat. Shoe Co. v. Washington*, 326 U.S. 310, 90 L.Ed. 95, 66 S.Ct. 154 (1945), and *Shaffer v. Heitner*, 433 U.S. 186, 212, 53 L.Ed.2d 683, 97 S.Ct. 2569 (1977). Sun concludes there were no such "minimal contacts" between the nonresident plaintiffs and the state of Kansas. This issue was discussed in depth in *Shutts I*. Additionally, we held in *Shutts v. Phillips Petroleum Co.*, 235 Kan. 195, Syl. ¶ 1, 679 P.2d 1159, cert. granted ..... U.S. .... (October 9, 1984) (*Shutts II*):

"While the essential element to establish in personam jurisdiction over nonresident defendants is some 'minimum contact' between the defendant and the forum state, the element necessary to the exercise of jurisdiction over nonresident plaintiff class members is procedural due process."

Sun contends this Kansas rule is incorrect and should be reversed.

Sun next maintains the trial court applied an improper interest rate to the suspended royalties. Pursuant to Sun's agreement with the FPC to refund to gas purchasers any accumulated amounts of unapproved price increases, Sun also agreed to an interest rate to be paid on those amounts. The trial court applied that agreed-upon rate to the suspended royalties. Sun argues the statutory prejudgment rate of interest of each state should instead be applied. The Court of Appeals held in *Gray v. Amoco Production Company*, 1 Kan. App. 2d 338, 564 P.2d 579 (1977), *aff'd in part, rev'd in part* 223 Kan. 441 (1978), that the law of the forum pertaining to interest was applicable rather than the laws of the various states of residence of the plaintiffs. In *Shutts I*, 222 Kan. 527, Syl. ¶ 22, we stated:

"Where a gas producer, under circumstances described in the foregoing syllabus, files a corporate undertaking with the Federal Power Commission, wherein it agrees to pay 7% interest on 'FPC suspense monies' until rate proceedings are determined by the commission, and 8% thereafter on the gas purchasers' share of the 'impounded' money, in the event the commission orders a refund, equitable principles require that the royalty owners receive the same treatment as to their share . . . ."

The foregoing issues concerning commonality, due process, and improper interest are identical to those raised and decided in our previous decision in *Shutts II*, 235 Kan. 195, and are almost identical to *Sterling v. Marathon Oil Co.*, 223 Kan. 686, 576 P.2d 635 (1978); *Sterling v. The Superior Oil Co.*, 222 Kan. 737, 567 P.2d 1325 (1977), cert. denied 434 U.S. 1067 (1978); *Maddox v. Gulf Oil Corporation*, 222 Kan. 733, 567 P.2d 1326 (1977), cert. denied 434 U.S. 1065 (1978); *Shutts I*, 222 Kan. 527; *Helmley v. Ashland Oil, Inc.*, 1 Kan. App. 2d 532, 571 P.2d 345, rev. denied 222 Kan. 749 (1977); *Gray v. Amoco Production Company*, 1 Kan. App. 2d 338.

It is interesting to note Sun Oil Company, appellant in this case, filed an *amicus* brief in *Shutts II* in opposition to the royalty owners' position there. All three issues were thoroughly discussed and decided adverse to Sun's position in that case.

Sun's reply brief in this case was filed after the decision in *Shutts II*, giving it the full benefit of that decision. Its argument here is that *Shutts II* should be reversed. Sun presented no new matter in support of this contention other than that discussed and rejected in *Shutts II*.

We have reconsidered all of Sun's arguments on the first three issues and find no reason to reverse *Shutts II*. Thus, the issues raised justify no further discussion; we merely reaffirm our previous decisions.

The next issue raised by Sun Oil is whether a portion of appellees' claim is barred by the statute of limitations. Price increases allowed by Opinion 699 and 699H were collected by Sun from July, 1974 to April, 1976. They were paid out in July, 1976. Also in July, 1976, the FPC issued Opinion 770. Price increases from Opinion 770 and 770A were collected by Sun between December, 1976 and April 1978, when this amount was paid. This action was filed August 30, 1979, on the theory of unjust enrichment, which is in the nature of an implied contract. Thus, the three-year statute of limitations of K.S.A. 60-512 is the period about which their argument centers. It provides:

"The following actions shall be brought within three (3) years; (1) All actions upon contracts, obligations or liabilities expressed or implied but not in writing. (2) An action upon a liability created by a statute other than a penalty or forfeiture."

Appellant contends recovery for interest on suspense royalties paid in July, 1976, are barred by the three-year statute of limitations.

This issue was raised at trial, but the trial court made no specific ruling on it. We have held if an issue on appeal involves only a legal question arising on proven or admitted facts finally determinative of the case or if consideration is necessary to serve the ends of justice or to prevent a denial of fundamental rights, the appellate court may consider the issue even though it was not considered by the trial court. *State v. Puckett*, 230 Kan. 596,

Syl. ¶ 1, 640 P.2d 1198 (1982). The issue raised by Sur. of statute of limitations is a question of law. The record was uncontroverted as to when payments were made, when the opinions were issued, and when the case was filed. We conclude this is a question of law properly before this court.

The royalty owners argue the payments are not one-time transactions as contemplated by the three-year statute of limitations of K.S.A. 60-512, but rather are open accounts since each royalty owner is paid monthly for his or her share of gas produced. We defined an open account in *Spencer v. Sowers*, 118 Kan. 259, 261-62, 234 Pac. 972 (1925), as follows:

"A mutual, open, current account may be defined as an account usually and properly kept in writing, wherein are set down, by express or implied agreement of the parties concerned, a connected series of debit and credit entries of reciprocal charges and allowances, and where the parties intend that the individual items of the account shall not be considered independently but as a continuation of a related series, and that the account shall be kept open and subject to a shifting balance, as additional related entries of debits or credits are made thereto, until it shall suit the convenience of either party to settle and close the account; and where, pursuant to the original, express or implied intention, there is to be but one single and individual liability arising from such series of related and reciprocal debits and credits, which liability is to be fixed on the one party or the other as the balance shall indicate at the time of settlement or following the last pertinent entry of the account."



If an account is mutual, open and running, the statute of limitations runs on the balance of the account, thereby tolling the statute until final payment is made.

The payments made in July, 1976, by Sun, were not a part of the royalty owners' monthly payments for their share of gas produced, but were for an amount of royalty suspended for a period of time and then paid out in a lump sum to each royalty owner. Subsequent monthly royalty payments had no relationship to the July, 1976 payment or interest thereon. We hold, therefore, the transactions between Sun and the royalty owners pertaining to interest on suspended royalty not to be a mutual, open, running account.

However, that does not dispose of this issue. We held in *Shutts I* that the "United States Rule" applies to interest on suspense royalties. The "United States Rule" provides that in applying partial payments to an interest-bearing debt which is due, in the absence of an agreement or statute to the contrary, the payment shall be first applied to the interest due, then to principal. 45 Am. Jur. 2d, Interest and Usury, § 99, pp. 88-89; *Shutts I*, 222 Kan. 527; *Jones v. Nossaman*, 114 Kan. 886, 221 Pac. 271 (1923); *Christie v. Scott*, 77 Kan. 257, 94 Pac. 214 (1908). By applying the July 1976 payment under FPC Opinions 699 and 699H first to interest and then to suspended royalty, as required by the U.S. Rule, the statute of limitations issue is eliminated. The balance owed the royalty owners is royalty not interest. While interest is covered by implied contract, the payment of royalty is provided for in a written lease, which has a five-year statute of limitations pursuant to K.S.A. 60-511. This statute provides:

"The following actions shall be brought within five (5) years: (1) An action upon any agreement, contract or promise in writing."

Thus, we conclude this action is not barred by the statute of limitations.

The final issue involves the award of post-judgment interest by the court. Sun argues the granting of post-judgment interest by the trial court in this case was improper since the exact amount of the award permitted pursuant to the court's judgment was unknown at the time of the court's final decision. The court awarded interest at a set rate on each class members' accrued royalties. Thus, after the final judgment, the accrued royalties of each royalty owner had to be multiplied by the interest rate mandated by the court. This did not render the judgment so uncertain as to preclude post-judgment interest. The amount of accrued royalty for each individual and the interest rate were both known at the time of the court's judgment; to determine the exact amount owed under the court's order Sun merely had to multiply these two figures. In the other Kansas suspended royalty cases, cited previously, post-judgment interest was granted when the amounts were unknown to the same extent they are unknown in this case. This issue is without merit.

The judgment of the trial court is affirmed and the case remanded for determination of attorney fees, post-judgment interest, and entry of judgment consistent with this opinion.



(Dated April 12, 1985)

IN THE  
SUPREME COURT OF THE STATE OF KANSAS

Richard Wortman and Hazel Moore,	)	
et al.,	)	
	)	Appellees,
v.	)	No. 84-56494-AS
Sun Oil Company, a Delaware Cor-	)	
poration,	)	
	)	Appellant.

You are hereby notified of the following action taken  
in the above entitled case:

Motion by Appellant for Rehearing.

DENIED.

Yours very truly,  
Lewis C. Carter  
Clerk, Supreme Court

Date April 12, 1985

(Dated November 6, 1985)

SUPREME COURT OF THE UNITED STATES

No. 84-1971

Sun Oil Company,  
Petitioner,  
v.

Richard Wortman and Hazel Moore, etc.

ON WRIT OF CERTIORARI to the Supreme Court of  
Kansas.

THIS CAUSE having been submitted on the petition  
for writ of certiorari and response thereto,

ON CONSIDERATION WHEREOF, it is ordered and  
adjudged by this Court that the judgment of the above  
court in this cause is vacated with costs, and that this  
cause is remanded to the Supreme Court of Kansas for  
further consideration in light of *Phillips Petroleum Com-  
pany v. Shutts*, 472 U.S. .... (1985).

IT IS FURTHER ORDERED that the petitioner, Sun  
Oil Company, recover from Richard Wortman and Hazel  
Moore, etc., Two Hundred Dollars (\$200.00) for its costs  
herein expended.

October 7, 1985

Clerk's cost: \$200.00

UNITED STATES OF AMERICA, ss:  
THE PRESIDENT OF THE UNITED STATES  
OF AMERICA

To the Honorable the Justices  
of the Supreme Court of  
Kansas,

GREETINGS:

WHEREAS, lately in the Supreme Court of Kansas there came before you a cause between Richard Wortman and Hazel Moore, et al., Appellees, and Sun Oil Company, a Delaware Corporation, Appellant, No. 84-56494-AS, wherein the judgment of the said Supreme Court was duly entered on the twenty-sixth day of October, 1984, as appears by an inspection of the petition for writ of certiorari and response thereto.

AND WHEREAS, in the 1985 Term, the said cause having been submitted to the SUPREME COURT OF THE UNITED STATES on the said petition for writ of certiorari and response thereto, and the Court having granted the said petition.

ON CONSIDERATION WHEREOF, it was ordered and adjudged on October 7, 1985, by this Court that the judgment of the said Supreme Court in this cause be vacated with costs, and that this cause be remanded to the Supreme Court of Kansas for further consideration in light of *Phillips Petroleum Company v. Shutts*, 472 U.S. .... (1985).

IT IS FURTHER ORDERED that the petitioner, Sun Oil Company, recover from Richard Wortman and Hazel Moore, etc., Two Hundred Dollars (\$200.00) for its costs herein expended.

NOW, THEREFORE, THE CAUSE IS REMANDED to you in order that such proceedings may be had in the said cause, in conformity with the judgment of this Court above stated, as accord with right and justice, and the Constitution and laws of the United States, the said writ notwithstanding.

Witness the Honorable WARREN E. BURGER, Chief Justice of the United States, the---6th---day of---November---in the year of our Lord one thousand nine hundred and eighty-five.

Costs of Sun Oil Company

Clerk's costs: \$200.00

/s/ Joseph F. Spaniol, Jr.  
Clerk of the Supreme Court  
of the United States

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No. 84-1971

Sun Oil Company

v.

Richard Wortman and Hazel Moore, etc.

(Dated January 6, 1986)

IN THE  
SUPREME COURT OF THE STATE OF KANSAS

RICHARD WORTMAN and HAZEL	)	
MOORE, et al.,	)	
	)	Appellees,
v.	)	No. 56,494
SUN OIL COMPANY, A Delaware	)	
Corporation,	)	
	)	Appellant.

**ORDER**

Now on this 6th day of January, 1986, the above captioned case is hereby remanded to the Pratt County District Court with instructions to proceed, pursuant to the order of the United States Supreme Court, in accordance with *Phillips Petroleum Company v. Shutts*, 472 U.S. .... (1985).

It Is So Ordered.

/s/ Alfred G. Schroeder  
Alfred G. Schroeder, C.J.  
For the Court

(Filed July 14, 1986)

IN THE  
DISTRICT COURT OF BARBER COUNTY, KANSAS

RICHARD WORTMAN, et al.,	)	
	)	Plaintiffs,
-vs-	)	Case No. 79C40
SUN OIL COMPANY,	)	
	)	Defendants.

**MEMORANDUM DECISION**

Pursuant to Order of Remand issued by the Kansas Supreme Court on January 6, 1986, this case was briefed by the parties and was orally argued before the Court on April 29, 1986. The case had been remanded by the United States Supreme Court to the Kansas Supreme Court and then to this Court as the original Trial Court. Jurisdiction over the class as ordered by this Court has been affirmed. The remaining issues are liability of the defendant, if any, for interest on suspended royalty payments, according to laws of the various states involved and the rate of interest.

The facts of this case are as stated in the original Findings of Fact of this Court and its Memorandum Decision of December 12, 1983, pages 1-6, which are made a part hereof and will not be repeated here, plus the following supplemental finding as to interest rates from March, 1982, to date of judgement in December, 1983:

April to June '82 (March, Apr, May)	16.50%
July to September '82 (June, July, August)	15.72%
October to December '82 (Sept., Oct., Nov.)	12.62%



January to March '83 (Dec. '82, Jan. & Feb. '83)	11.21%
April to June '83 (March, April, May)	10.50%
July to September '83 (June, July, August)	10.63%
October to December '83 (Sept., Oct., Nov.)	11.00%
(Above compounded quarterly. 18CFR 154.67)	

### CONCLUSIONS OF LAW

The Court has again carefully examined the case law and statutory law of Texas, Oklahoma, Louisiana, New Mexico and Mississippi and compared the laws of each state to the general contract interest law and equitable or moratory interest law as applied by the Kansas Court in *Shutts I* and *Shutts II*; and in this case, I find that all of those states allow a higher interest rate if there is a contract or specific agreement calling for a higher rate of interest, or in situations where equity would require a higher rate; that the equitable or moratory rate is the FERC rate, not the statutory rate; and that there is no conflict with the allowance by the Kansas Court of a contract rate or an equitable agreed rate of interest, the FERC rate, herein to royalty owners resident in other states named above.

Although plaintiffs' remedy, the recovery of interest, sounds in equity, the nature of the action is the enforcement of a written agreement which is governed in Kansas by K.S.A. 60-511 and governed in the other states named above by similar statutes concerning payment of interest under written agreements. The Petition states (pages 2 and 3) that plaintiffs and other members of the class are entitled to recover from Sun for its use of the money on

any one or more of the following theories or for the following reasons:

- a. The doctrine of unjust enrichment (*Shutts I*);
- b. The equitable principle of paying interest on actual use of money belonging to another (*Shutts I*, Syllabus 20);
- c. Equitable principles that class members receive the same treatment as gas purchasers as to interest required by FPC (*Shutts I*, Syllabus 21 and 22);
- d. Sun made an express agreement by filing corporate undertaking with FPC to pay interest on the "suspended proceeds" (*Shutts I*, Page 564.)

Legal proceedings are what they are in essence and not what they may be named. (*Nelson v. Stull*, 65 Kan. 585, 68 Pac. 617.) If facts set forth in a petition entitle a party to relief, it is immaterial by what name the action is called. The Court must ascertain the true scope and nature of the action. (1 Am. Jur. 2d, *Actions*, Subsection 5, Pages 545-546.) This case has an unjust enrichment feature, a basis in equity. It also has a contract feature, a basis in contract, both the oil and gas leases and the undertaking filed with FPC. Although plaintiffs' remedy may be of an equitable nature, for damages, the basis of the action arises from and grows out of written agreements. If the action is one for damages, that in and of itself does not convert it to something other than an action growing out of written contracts. (See *Baker v. Skinner*, 63 Kan. 83, 64 Pac. 981; and *Thompson v. Phillips Pipeline Co.*, 200 Kan. 669, 438 P.2d 146.)

As a legal proposition, this case is identical to *Shutts v. Phillips Petroleum*, 222 Kan. 527, 567 P.2d 1392 (1977), cert. denied 434 U.S. 961. The only factual distinctions

are the numbers involved and that FPC began making its rates nationally rather than regionally, beginning with Opinion No. 699. Insofar as royalty owners are concerned, the size and scope of the class was naturally determined by the size and scope of the FPC rate structure. Royalties under Opinion Nos. 699 and 770 were suspended, used by Sun and paid out in the same manner and at the same time to all of Sun's royalty owners involved in the six states where Sun produces natural gas.

The Court adopts the choice of law discussion set forth by the Kansas Supreme Court in *Shutts I*. I have further examined the laws of all states involved herein and applying those laws and case authorities to the facts previously determined, I come to the same result concerning FERC interest rates to be applied as before. All states involved herein recognize interest rates higher than established by a general statute in cases where a contract or agreement provides a higher rate and also in cases involving equitable and moratory interest. The laws of the other states do not conflict with the laws of Kansas on the interest rate to be used.

The interest rates to be applied herein are the FERC interest rates according to 18 CFR 154.67 and as set forth above. The rates are 9% per annum simple interest to September 30, 1979, (after this case was filed in August, 1979) and thereafter at bank prime rates averaged and compounded quarterly, as set forth above until date of judgement. After date of judgement, the Kansas judgement rate of 15% per annum simple interest applies.

The only states where the liability issue of interest on FPC suspense royalties has been presented directly are Kansas, Texas and Louisiana. Leading cases on the liability issue are as follows:

Kansas: *Shutts, Executor v. Phillips Petroleum Co.*, 222 Kan. 527, 567 P.2d 1292, cert. denied 434 U.S. 1068; and *Shutts v. Phillips Petroleum Co.*, 235 Kan. 195, 679 P.2d .....;

Texas: *Phillips Petroleum Co. v. Stahl Petroleum Co.*, 569 S.W.2d 480;

Louisiana: *Boutte v. Chevron Oil Co.*, 315 F. Supp. 524.

In this case there is one key fact: for several years Sun used money owed to royalty owners all the while knowing it never owned the money. While Sun collected 8/8th of the increased rates, the 1/8th royalty share could never belong to Sun. That royalty share, according to eventual FERC ruling and Court approval, was either to go to royalty owners, or back to gas purchasers, with interest, or part to one and part to the other. This is true regardless of whether the increased rates were ultimately approved, disapproved or approved in part and disapproved in part. Finally the rate increases were approved, the approval conclusively determining that from the date of receipt of the increased rates the gas was worth the increased amount. Thereafter, the suspense royalties were paid to the gas royalty owners, but without interest and without any suggestion that interest was due.

There is nothing in the interest statutes of the other five states involved that would not allow the Kansas Court to grant contract rate interest or equitable or moratory interest in this case. There is nothing in the interest statutes of other states involved that would not allow the granting of FERC interest where Sun has agreed to pay FERC interest to purchasers in the event of refund of the same money. Any alleged conflict overlooks the essential

basis for the suit, seeking interest as required by contract and equity. No authority has been found demonstrating Texas or Oklahoma or any other state involved takes a narrower view of that requirement.

By accepting the rate increases on the condition of having to repay purchases with interest at FERC rates, even remotely prudent practices dictate that Sun invested the money so as to yield at least 9% which was the FERC rate during all the periods of suspension herein and until payout. Thereafter, and in August, 1979, this suit was filed, and after September 1979, and the increase in FERC rates from 9% simple interest to the bank prime rate, compounded quarterly, Sun deliberately chose to contest paying interest rather than to pay and avoid much higher FERC rates that came later.

Many Kansas Supreme Court opinions on FPC suspense royalty interest were handed down in the period 1974 to 1978 when Sun was accumulating and using these FPC suspense royalties:

- a. *Shutts I* supra;
- b. *Gray v. Amoco Production Co.*, 1 Kan. App. 2d 338, 564 P.2d 579; 223 Kan. 441, 573 P.2d 1080;
- c. *Maddox v. Gulf Oil Corp.*, 222 Kan. 733, 567 P.2d 1326, cert. denied 98 S.Ct. 1242;
- d. *Sterling v. Marathon Oil Co.*, 223 Kan. 686, 576 P.2d 634;
- e. *Sterling v. Superior Oil Co.*, 222 Kan. 737, 567 P.2d 1325, cert. denied 98 S.Ct. 1246;
- f. *Nix v. Northern Natural Gas Producing Co. and Mobil.*, 222 Kan. 739, 567 P.2d 1332, cert. denied 98 S.Ct. 1246; and

- g. *Helmley v. Ashland Oil Co., Inc.*, 1 Kan. App. 2d 532, 571 P.2d 345.

These cases clearly hold Kansas committed to FERC rates on interest to be allowed.

## TEXAS

*Sid Richardson Carbon & Gas Co. v. Phillips Petroleum Co.*, 456 F.2d 203 (1972), was a federal case dealing with Texas law. Richardson had a contract with Phillips pertaining to price to be paid by Phillips to Richardson for residue gas. The contract provided for a price "equal to the price . . . which Phillips receives . . . for gas sold to El Paso Natural Gas Company. . ." The contract further provided that in the event Federal Power Commission orders required Phillips to refund to El Paso, the price to Richardson also would be adjusted. The contract said nothing about interest, but the case definitely states at Page 201:

"Phillips made refunds to El Paso under Federal Power Commission orders together with interest. . ."

The Court further held:

"Phillips contends that the Texas law prohibits the award of interest on interest. . . We think Phillips misses the mark on this argument. The sum found due is technically interest. In substance, however, it is a part of the sum necessary under the holding of the District Court to place Richardson in parity with El Paso under the contract. Once that sum was determined, it became a part of the whole. Interest was due on so much of the whole as remained unpaid after January 31, 1969."

Texas is a state that has a number of cases, both state and federal, dealing with the subject of interest on FPC



suspense royalties. In all of them, interest has been allowed, at the statutory interest rate of 6% excepting from the *Sid Richardson* case. They include: *Phillips Petroleum Co. v. Adams*, 513 F.2d 355 (1975); *First National Bank of Borger v. Phillips*, 513 F.2d 371 (1975); *Phillips Petroleum Co. v. Riverveiw*, 513 F.2d 374 (1975); *Fuller v. Phillips*, 408 F. Supp. 643 (1976); *Phillips Petroleum Co. v. Hazelwood*, 409 F. Supp. 1193 (1976); *Phillips Petroleum Co. v. Hazelwood*, 534 F.2d 61 (1976); *Stahl Petroleum Co. v. Phillips Petroleum Co.*, 550 S.W.2d 360 (1977); and *Phillips Petroleum Co. v. Stahl Petroleum Co.*, 569 S.W.2d 480 (1978).

The last *Stahl* case was the one where the equitable principles were used in addition to other theories, but the statutory interest rate was applied rather than FERC contract rate because no one had asked for the FERC contract rate.

#### OKLAHOMA LAW

There are numerous decisions in various jurisdictions fixing an equitable rate of interest different than the statutory rate, such as the Colorado Federal Court case of *Davis Cattle Co., Inc. v. Great Western Sugar Co.*, 303 F. Supp. 1165, cited by plaintiffs. Equitable or moratory interest is distinguished by every state in the nation from statutory interest. It is an underlying facet of American law and demonstrates that the law is fair and just. Sun does not argue that it would be either equitable, fair or just for it to pay only 6% interest when the going rate was twice that or more. Oklahoma follows this doctrine of unjust enrichment, *Monarch Refineries v. Union Tank Car Co.*, 141 P.2d 566 and *Welling v. American Roofing*, 617 P.2d 206.

*Roberson Steel Co. v. Harreil*, 177 F.2d 12 (Oklahoma, 10th Circuit 1949) was a case involving Oklahoma law. It was said at Page 17:

"It is the general rule of law in Oklahoma that interest on an unliquidated account or claim is not recoverable until the amount due is fixed by judgement. *Dick v. Essary*, Oklahoma Supp. 203 P.2d 715; *Grand River Dam Authortiy v. Jarvis*, (10th Circuit) 124 F.2d 914; *Saulsbury Oil Co. v. Phillips Petroleum Co.*, (10th Circuit) 142 F.2d 27, certiorari denied 323 U.S. 727, 65 S.Ct. 62, 89 L. Ed. 584. But compensation is a fundamental principle of damages, whether the action be in contract or tort; and one who fails to perform his contract is justly bound to make good all damages which naturally and reasonably accrue from breach. And while generally interest is not allowed upon unliquidated damages prior to the entry of judgement, the court may in the exercise of a sound discretion include interest or its equivalent as an element of damages when it is necessary in order to arrive at fair compensation. *Miller v. Robertson*, 266 U.S. 243, 45 S.Ct. 73, 69 L. Ed. 265; *Concordia Insurance Co. v. School District No. 98*, 282 U.S. 545, 51 S.Ct. 275, 75 L. Ed. 528."

Our Kansas Supreme Court in *Shutts I* said at Page 562:

"Oklahoma has no decision allowing interest on 'suspense royalties.' However, several Oklahoma decisions hold that interest may be awarded on equitable grounds where necessary to arrive at a fair compensation. (*Smith v. Owens*, 397 P.2d 673 (Oklahoma 1963);



and

*First National Bank & T. Co. v. Exchange National Bank & T. Co.*

New Mexico undoubtedly would allow the contract - FERC rate. It does have an equitable or moratory interest case, *Chromo Mountain Range Partnership v. Gonzales*, 681 P.2d 724 (1984), which includes the allowance of moratory interest in connection with a land sale contract. (See also *Robb v. Universal Constructors, Inc.*, 665 F.2d 998, 1002.)

The statute quoted by Sun applies "in the absence of a written contract fixing a different rate. . ." In this case, we do have a written contract fixing a different rate, the undertaking filed by Sun with FERC.

#### MISSISSIPPI

Sun quotes no case in Mississippi that would prevent the Mississippi courts from allowing the FERC contract rate as was done in this case and in *Shutts II*. Mississippi, therefore, undoubtedly would allow the contract rate and the equitable rate allowed in this case.

Statutes of limitation questions raised by Sun at this time are a non issue - a dead issue; but this action is not barred by statutes of limitation either in Kansas or in the other states involved. In addition to the "US Rule" which makes the five year statute pertaining to royalties apply, the agreed or contract rate published by FERC also applies, and the expressed contract statute of limitations applies in all states. The Kansas Supreme Court held in this case that the five year statute, not the three year statute as alleged by Sun, applied. The five year statute applies to written instruments. There were two

written instruments, express agreements or contracts which have relation to this case: (1) the oil and gas leases; and (2) the corporate undertaking filed by Sun with FERC to pay both principal and interest on this same money. Sun continued to argue statutes of limitation in its Petition for Certiorari. The U.S. Supreme Court granted certiorari and remanded the case for reconsideration, but only "in the light of *Shutts II*". *Shutts II* says nothing whatsoever about statutes of limitation. The Kansas Supreme Court remanded to this court to reconsider also "in the light of *Shutts II*". The matter is no longer debatable. Laws pertaining to collection of interest in the other states involved on written obligations are applicable and include all interest sought by plaintiffs to be recovered from a date five years back or more from the date of filing their Petition. Interest is allowed on all amounts collected and used by Sun to a date beginning five years back of the filing of the Petition in this case.

Kansas, through *Shutts I and II*, has developed common law principles applicable to the facts of this case. I find no disregard for the laws of other states nor unfair application of Kansas law to the litigants has occurred. Sun has no constitutional right to avoid judgment in Kansas because it might have convinced a Court in another state to develop its law differently. I find that no unambiguous conflict has occurred in the rulings of *Shutts II* as compared to the established laws of the five other states involved.

Both sides are agreed that it would be desirable to mail an additional notice with an exclusion request attached in order to avoid further arguments on due process. Copy of such notice, as requested by plaintiff class,

is hereto attached and is ordered mailed by defendant to all members of the class. Such mailing may be included in the next regular monthly royalty payment disbursed by the defendants, but in no event not later than 15 days from the filing of this order. If there are members of the class not presently receiving royalty payments, on a monthly basis, or if there be members of the class who are no longer receiving royalty payments, then such notice shall be mailed by defendants within 15 days from the filing of this memorandum order.

The Court specifically finds that allowance of only 6% per annum statutory rate in times when bank prime rates rose as high as 10% to 20% was neither equitable nor proper.

Sun should pay the costs of this action, including costs of mailing the first notice on the class order by plaintiffs and the second notice as attached hereto.

Sun is hereby ordered, within 30 days of the date of this order, to account to the plaintiff class for the total amount of money owed pursuant to the interest rates herein applied; and, in the event of appeal, Sun should post bond according to statute.

Defendants' motion to decertify the class is overruled.

These findings and conclusions when filed shall act as a Journal Entry.

/s/ Clarence E. Renner  
Clarence E. Renner  
District Judge

Original - file

Copies - W. Luke Chapin  
Ed Moore  
Gerald Sawatzky  
William C. Phelps

IN THE  
DISTRICT COURT OF BARBER COUNTY, KANSAS  
RICHARD WORTMAN and HAZEL )  
WORTMAN, Individually and as )  
representatives of certain others, )  
Plaintiffs, ) Case No. 79C40  
-vs- )  
SUN OIL COMPANY, a Delaware )  
Corporation, )  
Defendant.)

#### NOTICE OF CLASS ACTION SUIT AND JUDGEMENT

TO: All royalty owners and overriding royalty owners to whom Sun Oil Company (Sun) made payment of suspended royalties in 1975 through 1979, pursuant to Federal Power Commission Opinion Nos. 586, 699, 699H, 770 and 700A.

In 1983, you received notice that you are a member of plaintiff class in this suit against Sun for the payment of interest on suspended royalties paid by defendant in 1975 through 1979 attributable to increased gas sales prices received and withheld and used by Sun subsequent to August 23, 1974. There were about 3,000 gas royalty owners who received suspense payments in excess of \$3,000,000.00.

Case was tried in the District Court of Barber County, Kansas, and interest allowed according to Federal Power Commission interest rates; on appeal the Kansas Supreme Court affirmed; on Petition for Certiorari to the U.S. Supreme Court, it remanded to Kansas with instructions to consider further laws of other states involved, including interest rates, "in light of *Phillips Petroleum Company v. Shutts*, 472 U.S. .... (1985), 86 L. Ed 2d 628, 105 S.Ct. 2965."

This trial court has again considered the matter and allowed interest to you and other members of plaintiff class. your share is proportionate to the amount of suspense royalties you received.

You will be included as a member of plaintiff class and receive interest check from Sun in due time, subject to further possible appeal by Sun; provided, however, you may elect to be excluded from the class and from receiving interest check by sending [sic] a request for exclusion form which appears at the end of this notice to the Clerk of the Court addressed as follows:

Clerk of the District Court, Barber County Courthouse,  
Medicine Lodge, Kansas 67104.

This request must be mailed so as to be received on or before August 15, 1986. The court has determined that all requests for exclusion received on or before that date will be granted without further hearing. Any class member, if so desired, may appear in the case in person or through his own counsel; otherwise, plaintiffs' counsel will continue to represent him as a member of the plaintiff class.

Judgement in this action, whether for the plaintiff class or the defendant, will be binding upon all class members except those who may be excluded as above stated. Class members excluded will not be entitled to share in the benefit of any judgement or settlement entered or concluded favorable to plaintiff class, nor will excluded class members be held bound in this action if judgement eventually is rendered for Sun.

Plaintiffs' attorneys' fees are contingent on recovery. If the plaintiffs are successful, the court will allow a reasonable attorneys' fee for plaintiffs' attorneys, not exceeding 1/3rd of the interest fund created. This means

that if the interest judgement entered in your favor is affirmed on appeal and not reversed, the court may award up to 1/3rd of it to be paid to plaintiffs' attorneys to compensate them for representing your interests. If you elect to intervene with your own attorneys, your share of a favorable judgement will not be reduced, excepting for the work done by plaintiffs' attorneys up to date. If you request exclusion from the class, you will not be assessed any attorneys' fees or costs; neither will you receive any share of interest which may be allowed. If Sun should eventually win and no interest is allowed to your class, no attorneys' fees or costs can be assessed to you. if you want further information, please do not call the Judge of [sic] Clerk of the court, but call or write to one of the attorneys listed below.

If you want to remain eligible for interest check, do nothing.

If you want to exclude yourself from plaintiff class and possibility of receiving interest check, send in request below.

-----  
Clarence E. Renner  
District Judge

Attorneys for Plaintiffs:

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William C. Phelps  
Sun Gas Company  
Three North Park East  
Dallas, TX 75221



(Cut Here)

IN THE  
DISTRICT COURT OF BARBER COUNTY, KANSAS

RICHARD WORTMAN and HAZEL )  
MOORE, Individually and as repre- )  
sentatives of certain others, )  
Plaintiffs, ) Case No. 79C40

-vs- )  
SUN OIL COMPANY, )  
Defendant. )

REQUEST FOR EXCLUSION

TO THE CLERK OF THE DISTRICT COURT OF BARBER COUNTY, KANSAS, MEDICINE LODGE, KANSAS 67401:

The undersigned respectfully requests to be excluded from the plaintiff class members in this case in accordance with the terms of this notice of class action and judgement dated July, 1986.

DATED ....., 1986.

Send to:

Clerk of the District  
Court  
Barber County  
Courthouse  
Medicine Lodge,  
KS 67104

Signature: .....  
Print Name: .....  
Address: .....  
Sun Owner No. ....

(Filed March 30, 1987)

IN THE  
SUPREME COURT OF THE STATE OF KANSAS

No. 59,804

RICHARD WORTMAN and HAZEL MOORE, Individually and as representatives of all producers and royalty owners to whom Sun Oil Company has made or should make payment of suspended proceeds or royalties pursuant to FPC opinions or FERC,

*Appellees,*

v.

SUN OIL COMPANY,  
*Appellant.*

**SYLLABUS BY THE COURT**

1.

In a multi-state class action suit for interest on suspended gas royalties, it is held prejudgment interest is appropriate and should be calculated for all members of the class at the interest rate Sun Oil Company agreed to pay its purchasers if its rate increase was not approved by the Federal Energy Regulatory Commission.

2.

In a multi-state class action suit for interest on suspended royalties, post-judgment interest shall be calculated at the statutory rate for each state where the royalties are produced.

3.

In order for a court of this state to exercise jurisdiction over a nonresident class action plaintiff, it must



meet minimal due process requirements—among other things, that a nonresident plaintiff be provided with an opportunity to remove himself from the class by executing and returning an “opt out” or “exclusion request” form to the court.

4.

While ordinarily the costs of sending notice must be borne by the plaintiff class, under the circumstances of this case, the expense of sending additional notice was properly placed upon the defendant.

5.

Generally, limitation statutes are considered as being remedial or procedural in their application and do not affect the substantive rights of the litigants.

Appeal from Barber district court, CLARENCE E. RENNER, judge. Opinion filed March 30, 1987. Affirmed in part and reversed in part.

Gerald Sawatzky, of Foulston, Siefkin, Powers & Eberhardt, of Wichita, argued the cause, and Jim H. Goering, of the same firm, was with him on the briefs for appellant.

W. Luke Chapin, of Chapin & Penny, of Medicine Lodge, argued the cause, and Ed Moore, of Ginder & Moore, of Cherokee, Oklahoma, was with him on the brief for appellees.

The opinion of the court was delivered by

HERD, J.: This is a class action filed in August of 1979 on behalf of owners of mineral leaseholds seeking to recover suspended gas royalties from Sun Oil Company. This court affirmed the district court's judgment for the plaintiff class in *Wortman v. Sun Oil Co.*, 236

Kan. 266, 690 P.2d 385 (1984). The United States Supreme Court subsequently vacated and remanded this case in light of *Phillips Petroleum Company v. Shutts*, 472 U.S. 797, 86 L. Ed. 2d 628, 105 S. Ct. 2695 (1985) (*Phillips*).

While the facts in this case were set forth in some detail in our previous opinion, they will be summarized here for reference purposes.

During the 1960's and 1970's, Sun Oil Company applied to the Federal Power Commission (FPC) for gas price rate increases. While waiting for approval of such increases, Sun charged its purchasers the increased rates, but withheld the increased gas royalties from the owners of the mineral leaseholds.

In order to qualify for the price increases, the FPC required Sun to enter into an undertaking which required it to refund to its purchasers any price increases not ultimately approved together with interest at rates established by the Federal Energy Regulatory Commission (FERC) thereon. Sun then informed its royalty owners that payment of the increased price would be suspended until final approval of the rate increases.

In July of 1976, pursuant to FPC opinions 699 and 699H, Sun paid \$1,167,000 in suspended royalties to owners of oil and gas leaseholds in six states: Texas, Oklahoma, Louisiana, New Mexico, Mississippi, and Kansas. This payment was a result of price increases collected by Sun between July 1974 and April 1976.

In April of 1978, pursuant to FPC opinions 770 and 770A, Sun paid suspended royalties in the amount of \$2,676,000 to royalty owners with property in the six states

listed. This payment resulted from price increases collected by Sun between December 1976 and April 1978.

This suit was filed on August 30, 1979, to recover prejudgment interest on the suspended gas royalties and was subsequently certified as a class action. Notice of the action was sent to 3,159 class members. Of these, 105 members "opted out" of the class, although none of the members were supplied with a request for exclusion ("opt out") form.

The district court determined prejudgment interest was due from Sun to the royalty owners and applied an interest rate derived from Sun's corporate undertaking with the FPC. (Sun had agreed to an interest rate to be paid on accumulated amounts of unapproved price increases refunded to gas purchasers.) The district court also awarded post-judgment interest. This court affirmed the district court's judgment in *Wortman v. Sun Oil Co.*, 236 Kan. 266, as to prejudgment interest.

The United States Supreme Court vacated and remanded this case in light of *Phillips*, holding that application of Kansas contract and equity law to class actions involving gas leases predominantly in other states was sufficiently arbitrary and unfair as to exceed constitutional limits.

On remand, the district judge concluded as follows:

"I have further examined the laws of all states involved herein and applying those laws and case authorities to the facts previously determined, I come to the same result concerning FERC interest rates to be applied as before. All states involved herein recognize interest rates higher than established by a gen-

eral statute in cases where a contract or agreement provides a higher rate and also in cases involving equitable and moratory interest. The laws of the other states do not conflict with the laws of Kansas on the interest rate to be used.

"The interest rates to be applied herein are the FERC interest rates according to 18 CFR 154.67 and as set forth above. The rates are 9% per annum simple interest to September 30, 1979, (after this case was filed in August, 1979) and thereafter at bank prime rates averaged and compounded quarterly, as set forth above until date of judgment. After date of judgment, the Kansas judgment rate of 15% per annum simple interest applies." (Emphasis added.)

The district court also ruled that the Kansas five-year statute of limitations for actions on written instruments was applicable to the claims of both residents and non-residents. Finally, the district court determined that "opt out" forms should be mailed to class members at the expense of the defendant within 15 days from the filing of the court's decision. Sun appeals from the district court's rulings.

The first issue on appeal is whether the district court improperly applied a prejudgment interest rate derived from Sun's corporate undertaking with the FPC. Sun argues that under *Phillips*, the statutory interest rate of each state in which gas leases are located must be applied.

This issue was recently addressed and resolved in *Shutts v. Phillips Petroleum Co.*, 240 Kan. 764, ..... P.2d ..... (1987) (*Shutts*). In *Shutts*, this court reviewed the law of six jurisdictions containing 97% of Phillips' nationwide leases (Texas, Oklahoma, New Mexico, Wyoming, Louisiana, and Kansas). The court concluded:

"Based upon the law of the five enumerated jurisdictions as above reviewed, and upon all of the facts, conditions, and circumstances presented by this case, we find all jurisdictions would apply equitable principles of unjust enrichment to hold Phillips liable for interest on the royalties held in suspense by Phillips as a stakeholder. Under equitable principles, the states would imply an agreement binding Phillips to pay the funds held in suspense to the royalty owners when the FPC approved the respective rate increases sought by Phillips, together with interest at the rates and in accordance with the FPC regulations found in 18 C.F.R. § 154.102 (1986) to the time of judgment herein. *These funds held by Phillips as stakeholder originated in federal law and are thoroughly permeated with interest fixed by federal law in the FPC regulations as heretofore set forth in this opinion.*" (Emphasis added.) 240 Kan. at .....

*Shutts* is controlling here and requires us to find the district court applied the proper prejudgment interest rate to the suspended royalties.

Also, pursuant to *Shutts*, we hold that the applicable interest after the date of the judgment, July 14, 1986, shall be the statutory rate for each state where the gas royalty is produced.

In Kansas, K.S.A. 1986 Supp. 16-204(c) sets the rate for post-judgment interest. The statutory interest rates on judgments in all states involved in this action, other than Kansas, are: Texas—18% (Tex. Rev. Civ. Stat. Ann. art. 5069-1.05 [Vernon 1987]); Oklahoma—15% (Okla. Stat. tit. 12 § 727 [1985]); Louisiana—7% (La. Civ. Code Ann. art. 2924 [West 1987 Supp.]); New Mexico—15% (N.M.

Stat. Ann. 56-8-4 [1986]); Mississippi—8% (Miss. Code Ann. § 75-17-7 [1986 Supp.]).

The appellant next alleges the district court erred in failing to require that class members receive exclusion request forms prior to entry of judgment and in ordering the appellant to pay the costs of notice.

With respect to this issue, the district court held:

"Both sides are agreed that it would be desirable to mail an additional notice with an exclusion request attached in order to avoid further arguments on due process. Copy of such notice, as requested by plaintiff class, is hereto attached and is ordered mailed by defendant to all members of the class. Such mailing may be included in the next regular monthly royalty payment disbursed by the defendants, but in no event not later than 15 days from the filing of this order. If there are members of the class not presently receiving royalty payments, on a monthly basis, or if there be members of the class who are no longer receiving royalty payments, then such notice shall be mailed by defendants within 15 days from the filing of this memorandum order."

In order for the district court to properly assert personal jurisdiction over class members whose residences and leases are not in the State of Kansas, minimal due process requirement must be satisfied. These requirements were recently set forth in *Phillips Petroleum Co. v. Shutts*, 472 U.S. at 811-12:

"If the forum State wishes to bind an absent plaintiff concerning a claim for money damages or similar relief at law, it must provide minimal procedural due



process protection. The plaintiff must receive notice plus an opportunity to be heard and participate in the litigation, whether in person or through counsel. The notice must be the best practicable, 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' [Citations omitted.] The notice should describe the action and the plaintiffs' rights in it. *Additionally, we hold that due process requires at a minimum that an absent plaintiff be provided with an opportunity to remove himself from the class by executing and returning an 'opt out' or 'request for exclusion' form to the court. Finally, the Due Process Clause of course requires that the named plaintiff at all times adequately represent the interests of the absent class members.*" (Emphasis added.)

Since opt out forms were never sent to class members with the notice in this case, the district court properly determined such forms must be sent in order to meet minimal due process requirements. The appellant argues, however, that the court erred in not requiring that opt out forms be sent prior to entry of judgment and at the expense of plaintiffs rather than defendants.

Notice to class members must be sent long before the merits of the case are adjudicated. 7B Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 1788 (1986). Here, while notice was sent to class members when the class was certified, it did not contain an opt out form.

Appellant cites no authority for its contention that the district court erred by not requiring opt out forms be

sent prior to entry of judgment. Here, the district court had previously ruled in favor of the class and this court affirmed. While the case was ultimately remanded to the district court, members of the class were aware judgment had previously been entered for the class and the primary remaining question was what interest rate would be applied. Under such circumstances, it was proper for the district court to require that opt out forms be sent within 15 days of entry of judgment.

This leaves the issue of whether the responsibility for sending additional notice and opt out forms was properly placed with the appellant. The district court ruled that Sun was responsible for mailing notice with the exclusion request form attached to all members of the plaintiff class. The court further held that such mailing could be included in the next regular monthly royalty payment disbursed by the defendant, but in no event later than 15 days from the filing of the order.

The case of *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 40 L. Ed. 2d 732, 94 S. Ct. 2140 (1974), is relevant to our analysis of this issue. In *Eisen*, a federal district court held a preliminary hearing to determine how to allocate the costs of notice to the class. At the hearing, it was determined that the plaintiff class was likely to prevail on its claim and the defendants were thus ordered to pay 90% of the costs of the action.

In reversing the district court, the Supreme Court ruled that a preliminary procedure, such as that utilized by the district court in *Eisen*, is improper as it "may result in substantial prejudice to a defendant, since of necessity it is not accompanied by the traditional rules and procedures applicable to civil trials." 417 U.S. at 178.

The court further ruled that a plaintiff must bear the initial notice costs as part of the "ordinary burden of financing his own suit." 417 U.S. at 179.

Since *Eisen*, lower courts have consistently held that notice costs must be borne by the plaintiff class. 7B Wright, Miller & Kane, Federal Practice and Procedure § 1788, p. 233. However, the Supreme Court in *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 358, 57 L. Ed. 2d 253, 98 S. Ct. 2380 (1978), left the possibility open that in some cases, the cost of notice could be placed on the defendant. The court ruled:

"In those cases where a district court properly decides under Rule 23(d) that a defendant rather than the representative plaintiff should perform a task necessary to send the class notice, the question that then will arise is which party should bear the expense. On one hand, it may be argued that this should be borne by the defendant because a party ordinarily must bear the expense of complying with orders properly issued by the district court; but *Eisen IV* strongly suggests that the representative plaintiff should bear this expense because it is he who seeks to maintain this suit as a class action. In this situation, the district court must exercise its discretion in deciding whether to leave the cost of complying with its order where it falls, on the defendant, or place it on the party that benefits, the representative plaintiff."

In the instant case, the merits of the case had already been determined against the defendant, Sun. Thus, we hold under the circumstances of this case the costs of

financing the additional notice were properly placed upon the defendant.

Sun next contends the district court erred in applying the Kansas five-year statute of limitations to the claims of nonresident class members insofar as those claims arose out of the 1976 payment of suspense royalties. Sun argues the United States Supreme Court's holding in *Phillips* requires the court to apply the statutes of limitations of each of the states in which the claim arose.

First, it should be noted that, in *Phillips*, the Supreme Court was concerned with the *substantive* conflict between Kansas law and the laws of the states in which the gas leaseholds were located. That substantive conflict related to the interest to be applied to royalty payments—an issue already resolved by this court.

Generally, limitation statutes are considered as being remedial or procedural in their application, and do not affect the substantive rights of the litigants. 51 Am. Jur. 2d, Limitation of Actions § 21, p. 605. Accordingly, we hold that *Phillips* does not require application of the various states' statutes of limitations and the district court did not err in applying the Kansas five-year statute of limitations to the claims of nonresident class members.

The judgment of the district court is affirmed in part and reversed in part.

HOLMES, J., not participating.

(Filed June 8, 1987)

IN THE  
SUPREME COURT OF THE STATE OF KANSAS

RICHARD WORTMAN and HAZEL )  
MOORE, Individually and as rep- )  
resentatives of all producers and )  
royalty owners to whom Sun Oil )  
Company has made or should make )  
payment of suspended proceeds or )  
royalties pursuant to FPC opinions ) No. 86-59804-AS  
or FERC, )  
Appellees, )  
v. )  
SUN OIL COMPANY, )  
Appellant. )

**ORDER**

Sun Oil Company's motion for rehearing is denied.

The opinion filed March 30, 1987, is modified starting with the next to the last paragraph on page 232 of the advance sheet (241 Kan.) to read as follows:

Generally, limitation statutes are considered as being remedial or procedural in their application, and do not affect the substantive rights of the litigants. 51 Am. Jur. 2d, Limitation of Actions § 21, p. 605. Accordingly, we hold that *Phillips* does not require application of the various states' statutes of limitations.

Sun Oil further argues that K.S.A. 60-516 requires the application of the statutes of limitation of the states in which the individual royalty owners reside. That statute provides that when a cause of action has arisen

in another state and by the laws of that state a cause of action cannot be maintained because of lapse of time, no action can be maintained thereon in this state. We hold K.S.A. 60-516 is inapplicable here because it applies only where the cause of action has arisen in another state. Here, the cause of action arose in Kansas as well as in Texas, Oklahoma, Louisiana, New Mexico, and Mississippi.

We conclude the district court did not err in applying the Kansas five-year statute of limitations to the claims of nonresident class members.

The judgment of the district court is affirmed in part and reversed in part.

HOLMES, J., not participating.

BY ORDER OF THE COURT this 8th day of June 1987.

/s/ Harold S. Herd  
Harold S. Herd, Justice  
For the Court



(Dated June 19, 1987)

IN THE  
SUPREME COURT OF THE STATE OF KANSAS

Richard Wortman, et al.,                     )  
  Appellees,    )  
  v.                     ) No. 86-59804-AS  
Sun Oil Company,                                )  
  Appellant.    )

You are hereby notified of the following action taken  
in the above entitled case:

Motion to alter court's modification of opinion.

DENIED.

Yours very truly,  
Lewis C. Carter  
Clerk, Supreme Court

Date June 19, 1987

(Dated July 31, 1987)

Bond No. 8111-98-80

IN THE  
DISTRICT COURT OF BARBER COUNTY, KANSAS

RICHARD WORTMAN and HAZEL    )  
MOORE, Individually and as representa-    )  
tives of certain others,                     )  
  Plaintiffs,    )  
  v.                     ) No. 79C40  
SUN OIL COMPANY, a Delaware Corpo-    )  
ration, now known as SUN EXPLORA-    )  
TION AND PRODUCTION COMPANY,        )  
  Defendant.    )

**SUPERSEDEAS BOND**

Sun Exploration and Production Company, formerly known as Sun Oil Company (Delaware), as principal, and Federal Insurance Company, as surety, give this bond in the amount of \$1,027,001.92, to assure the payment of the judgment for interest rendered in this case, plus statutory court costs. The principal and the surety company hereby covenant to pay into court a sum sufficient to pay the judgment for interest and costs, up to the above sum, in the event the judgment for interest and costs is not paid when due.

The obligation of this Supersedeas Bond shall be void in the event the judgment herein is paid or is vacated or set aside on further proceedings in the Supreme Court of the United States; otherwise it shall be in full force and effect.

DATED: July 31, 1987.

Sun Exploration and Production  
Company, Formerly Known as  
Sun Oil Company (Delaware)

Principal

(Signatures and Power of Attorney  
Omitted in Printing)